

**Virginia Department of Health (VDH)
Sewage Handling and Disposal Advisory Committee (SHADAC) Meeting
April 14, 2017**

Primary Meeting Location:

James Madison Building
5th Floor Main Conference Room
109 Governor Street
Richmond, Virginia 23219

Remote Locations:

Fairfax County Health Department
10777 Main Street
Fairfax, Virginia 22030

Wise County Health Department
134 Roberts Avenue, SW
Wise, Virginia 24293

List of Attendees at Primary Meeting Location:

SHADAC Members

Mike Lynn, Chairman – Home Builders Association of Virginia
Curtis Moore – Virginia Onsite Wastewater Recycling Association
Vincent Day – American Institute of Professional Geologist – Virginia Section
Valerie Rourke – Department of Environmental Quality
Laura Farley – Virginia Association of Realtors
Adam Feris – Virginia Environmental Health Association
Alan Brewer – Virginia Association of Counties
Bill Timmons – Citizen at large
Joel Pinnix – American Council of Engineering Companies of Virginia
Dwayne Roadcap – Virginia Department of Health
Bill Sledjeski – Virginia Association of Professional Soil Scientist

VDH Staff and Members of the Public

Lance Gregory – VDH	Dave Tiller – VDH	Marcia Degen – VDH
Angela Redwine – VDH	Paul Saunders	Bob Mayer
Mike Burch		

List of Attendees at Remote Locations:

VDH Staff and Members of the Public

Brad Stallard – VDH
Kevin Wastler – VDH

Adrian Joye – VDH

Martin Thompson – VDH

Administrative

1. Welcome.

Chairman Lynn welcomed the committee members, VDH staff and the public to the meeting.

2. Approve agenda.

Mr. Moore moved to approve the agenda. All members were in favor.

3. Review summary from September 21, 2016 meeting.

Mr. Moore moved to approved the summary. Mr. Brewer seconded the motion. All members were in favor.

Public Comment Period

There were no public comments.

Old Business

1. Update from Regulatory Reform Subcommittee.

Mr. Brewer provided an update on the work completed by the Regulatory Reform Subcommittee. In 2015 the SHADAC went through an exercise to determine what the committee should focus on. Many of the issues fell into the broad category of regulatory reform and the committee elected to form a subcommittee to develop recommendations for the full committee's consideration. The subcommittee started off by affirming the task, and then identified areas of the program that are working well. The subcommittee then began identifying issues in the program, and ways the problems can be addressed; options for regulatory reform. The options are outlined in a memorandum to Chairman Lynn from the subcommittee. Mr. Brewer noted that the options are not recommendations from the subcommittee. Options presented were not restrained by likelihood of what could be implemented. Mr. Brewer also noted that some of the options may require changes to the Code of Virginia in order to implement.

Mr. Moore noted that the subcommittee limited the scope to regulatory issues and did not look at the shift to privatization.

Mr. Feris asked what it would take for the subcommittee to make formal recommendations to the full committee for consideration.

Mr. Moore stated that the subcommittee thought it was best to lay out all options to the full committee because some options are diametrically opposed. The idea was to let the full committee decide on which options to recommend since the subcommittee did not fully represent all stakeholder groups.

Mr. Feris asked whether the full committee will make recommendations.

Chairman Lynn suggested looking at items that are priorities or that will be addressed in currently planned regulatory actions, and determine whether some of these items would require legislative changes.

Mr. Pinnix commented that the recommendations were listed under four group headings, and suggested looking at one group of issues at each of the next four meetings.

Mr. Moore commented that the committee may be able to streamline the process by getting input from VDH staff about what is actually possible.

Chairman Lynn commented that the limit of the committee's authority is to make recommendations to the Commissioner, and that he does not think anything is beyond the committee to take action to make a recommendation. Chairman Lynn then suggested focusing on the conflicting regulations group or perhaps paradigm shift group first.

Mr. Pinnix made a motion for the committee to review one group option regulatory reform options per meeting, with the first group being conflicting regulations.

The motion was seconded by Mr. Timmons.

All members of the committee approved the motion.

2. Issues related to internal VDH policies and processes; *standing agenda item.*

Mr. Pinnix stated that his experience is there is one permit issued by VDH; a construction permit. Under that there are repairs, voluntary upgrades, non-transferable waivers, minor modifications, and new construction. Guidance Memorandum and Policies (GMP) 2015-01 then list things that are supposed to be submitted. Mr. Pinnix's question is whether all of those items have to be submitted for every type of permit. Mr. Pinnix stated that he has found that local health departments are not providing all of those elements, but are requiring private sector providers to provide all elements. Mr. Pinnix stated that local health departments are either giving themselves a waiver or variance from the regulations, or they are creating an unbalanced paradigm. He commented that the Loudoun County Health Department issues minor repair permits, but minor repairs are not in the regulations, fee schedule, or policy. He commented that the Prince William County Health Department has their own policy related to voluntary upgrades. Mr. Pinnix suggested that central office staff need to explain the rules related to the

various types of permits to local health departments, and what is required for each type of permit. Mr. Pinnix also commented on issues related to plats. He commented that a plat is not regulatory or policy, it is statutory. The Code of Virginia says you will submit a plat with every application or VDH will create a waiver and the waiver has to be attached. Mr. Pinnix commented that on local health department stated they got a plat off of the counties GIS system; that is not a plat. Mr. Pinnix stated that he believes these issues increase VDH's competitive advantage in the market place.

Chairman Lynn stated that the GMP also requires that the drainfield be survey located, or that the drainfield be drawn on a copy of the plat.

Mr. Pinnix commented that it is legal, a recorded plat is a legal document, and it is not copyrighted.

Chairman Lynn asked whether the notice of recordation for alternative onsite sewage systems is commonly manipulated by the local health department based on the requirements of the local court.

Mr. Roadcap commented that the notice of recordation is a policy document, but it may be modified to meet the requirements of the local court clerk.

Mr. Pinnix suggested asking each local health department to work with the local courts to identify necessary changes, and create a single uniform recordation document.

Chairman Lynn stated that the issue is that some districts includes specifics about the system design on the notice of recordation, so if there is a change in the plan the district has to issue a new notice. One district is charging a fee for a new permit to issue the new notice of recordation.

Mr. Pinnix commented that he issue is specific to Loudoun County.

Mr. Roadcap stated that the central office can go to Loudoun or other district to ask them what they are requiring people to record that is different from the state form, and what authority they have for those additional requirements. He offered to put that item on the agenda under Old Business at the next meeting.

New Business

1. AOSS Regulations revision process.

Mr. Roadcap informed the committee that the Board of Health approved fast-track amendments to the Regulations for Alternative Onsite Sewage Systems (12VAC5-613, the AOSS Regulations) in December 2016. The amendments would change performance requirements for repairs and voluntary upgrade that result in direct dispersal. The amendments have gone through review by the Office of the Attorney General, the Department of Planning and Budget, and the

Secretary's Office. The Governor's office put amendments on hold, asking for more feedback on certain areas.

In addition to the fast-track amendments, the periodic review of AOSS Regulations concluded in February 2016. VDH committed to engaging in a stakeholder process. Central office staff provided a draft Notice of Intended Regulatory Action (NOIRA) at a previous SHADAC meeting. Karri Atwood is the project manager for working through a process to update the regulations. She is trying to create four subcommittees that would report back to the full SHADAC. Mr. Roadcap asked for volunteers for the subcommittees to contact Ms. Atwood.

Chairman Lynn asked whether the proposed subcommittee on field testing would include nitrogen issues or just treatment level 3 (TL-3).

Mr. Roadcap comment that VDH is looking at all of the performance requirements generally.

Mr. Pinnix commented that several of the subcommittees were variations on the same subject and suggested combining them into one.

Mr. Moore, Mr. Sledjeski, Mrs. Rourke, and Mr. Burch volunteered to participate.

2. AOSS Enforcement Manual.

Mr. Roadcap discussed the agencies efforts to develop an enforcement manual for AOSS operation and maintenance, and implementation of the Civil Penalty Regulations. He commented that VDH has been seeking voluntary compliance of AOSS owners to date. With that effort VDH is getting about 40% compliance statewide. The draft policy lays out the strategy of how VDH would interact with the other 60% of AOSS owners. The process would start with sending a letter notifying the owner of their requirements, then following up with a Notice of Alleged Violation (NOAV). If they still do not comply with the operation and maintenance requirements, VDH would send them a notice of a civil summons ticket. At the end of 60 days if the owner still has not done anything, staff would work with the Commissioner's Office to assess the fine. VDH is looking at doing civil penalties in batches, starting with the oldest systems that do not have an operator report.

Mr. Moore commented that the policy needs to make it clear that the clock starts again for owners with a report that need something fixed.

Mr. Sledjeski asked who would be responsible for all the civil penalties.

Mr. Roadcap commented that local health departments are responsible for implementing the procedure. The Health Director would then reach out to the central office for approval to move forward with potential enforcement.

Mr. Brewer made a motion that the SHADAC recommend that VDH conduct a resource analysis of the draft policy prior to adoption. Mr. Brewer raised concerns that VDH did not have the

resources to implement the policy as drafted based on the numerous layers of notifications, letters, and outreach to property owners.

Mr. Feris seconded the motion.

Mr. Roadcap commented that it appears VDH needs to provide clarity on the process in the policy.

Mr. Brewer withdrew the motion.

Mr. Pinnix voiced concern about the motivation for collecting the civil summons.

Chairman Lynn commented that the process seemed that a whole lot easier in Loudoun. He noted the key is the first letters that came out spelled out the consequences for not complying. He suggested spelling out the potential for civil penalties in the first letter to property owners.

Mr. Pinnix advocated for stepped up enforcement. He commented that VDH spends too much time on evaluation and design, and not enough on enforcement. He also raised concerns that if VDH starts batching enforcement in geographic areas, operators could become overwhelmed.

Mr. Brewer commented that he has heard from districts that they don't have the resources, even for the letter to send to owners about enforcement. He stated that VDH has to assess the impact from an implementation standpoint.

Mr. Moore commented that several areas in the policy reference a permit and asked whether the reference was to an operation permit.

Chairman Lynn commented that we get stuck on failing systems and how to make repairs affordable. He asked how much of that could be avoided if we were doing more to take care of the one million systems in the ground.

Mrs. Rourke asked if there is a way to do more education upfront and then go the enforcement route.

3. HB 2477 implementation and HB 558 report.

Mr. Gregory discussed VDH's plan for implementing House Bill 2477 of the 2017 General Assembly session. The bill outlines eight items VDH identified in the 2016 House Bill 558 report which the agency believe it could complete by policy or regulation. However, House Bill 2477 did not incorporate the other 12 items in the 2016 House Bill 558 report that sought a specific statutory change.

The first item deals with private sector designers notifying owners of options for conventional onsite sewage systems. VDH plans to address this item in an update to GMP 2015-01.

The second item requires VDH to inspect 100% of onsite sewage systems and private wells. VDH plans to address this item by revising GMP 2015-01. Additionally, VDH will establish a small workgroup of private sector designers, installers, well drillers, and VDH staff to establish clear expectations, roles, and processes for system inspections.

The third item deals with expanding efforts to educate the public. Prior to the meeting Mr. Gregory sent members a draft education and outreach plan.

The fourth item deals with incorporating onsite sewage system and private well data into community health assessments. The plan is to work with the newly created Data Division in the Office of Environmental Health Service (OEHS), the Office of Drinking Water, local health departments, and the Office of Health Equity to develop a plan for incorporating our data into that effort.

The fifth items regarding enhancing quality assurance procedures will part of the procedures for inspections.

Ms. Atwood is developing a small workgroup to address the sixth item, consideration for separating permitting and enforcement functions. OEHS will follow-up with the SHADAC as we go through that process.

The seventh item deals with improving collection and management of data. Staff need to discuss these items with the new Data Division whether improvement can be made with the current database or whether changes to the database are required.

The eighth item in House Bill 2477 is in regards to allowing the transfer of valid construction permits. The plan is to address this issue in revisions to GMP 2015-01.

In addition to implementation of the eight items, VDH must report its progress to the General Assembly by November 1, 2017. The plan is to put together a report that discusses our progress, as well as discussing necessary changes to implement the additional twelve recommendations from the 2016 House Bill 558 report.

Chairman Lynn commented that it is important to get through the issues in the regulatory reform subcommittee in the next two meetings so that they can be incorporated into the report back to the General Assembly.

Mr. Timmons and Mrs. Farley volunteered for the education and outreach workgroup.

Mr. Moore also volunteered to participate in the implementation workgroups.

i. GMP 2015-01 update.

Mr. Brewer commented that the draft policy says VDH will inspect 100% of systems by 2018. His understanding was that VDH would have to shift work to the private sector to get to 100% inspections.

Mr. Pinnix commented that the cost of doing business in Loudoun is 80 to 100% higher than for equivalent systems in the state. He asked how much of that is attributed to repeated inspections by Loudoun County Health Department staff, and asked whether the cost is worth the benefit.

Mr. Moore commented that there is a desire from the building industry to have VDH involved.

Chairman Lynn asked whether one option would be to allow the designer to decline or waive their right to inspection.

Mr. Tiller commented that the draft revisions to GMP 2015-01 are a broad-brush approach, but VDH will be creating some small workgroups to work out the details.

Mr. Pinnix commented that he didn't know what parts of the draft policy were broad-brush and which items would be the last opportunity for the SHADAC to comment. He made a motion to pass the policy by for the day.

There was no second; Chairman Lynn noted that the motion failed for lack of a second.

There was a significant amount of conversation regarding the draft revisions to GMP 2015-01. Comments included:

- House Bill 2477 says that all onsite sewage systems are to be inspected by VDH. Part A.1 of draft revisions to GMP 2015-01 state that VDH will increase to 100% inspections by 2019. She asked whether section D.1 should incorporate the same language, and whether the policy should follow the statutory language.
- The policy needs to designate whether it is talking about a construction permit or operation permit where the term "permit" is used.
- Can VDH provide an estimate on the additional staff time that would be required to implement 100% system inspections?
- It may push privatization forward if inspection becomes a higher priority than processing bare applications.
- If VDH is inspecting 100% of wells, why should the private sector do an inspection?
- VDH needs to define basic inspections.
- VDH could perform inspections based on risk factors.
- VDH should be notifying the private sector and owner prior to conducting a Level 2.
- It is the responsibility of VDH to send a copy of all permits to the designer.

- Regarding revisions to the designer's certification statement, would rather not have to check a box yes or no. Recommend a statement that if there was a conventional system available, the designer informed the owner.
- Regarding revisions to the designer's certification statement, what happens if the regulatory complaint option (e.g. gravelless system) is something the designer is not willing to design?
- Haven't even talked about whether that statement includes the option for a waiver or variance.
- Regarding transfer of valid construction permits, if an owner closes on the property, and the recordation letter hasn't been recorded, is it a valid closing if the person doing the recording doesn't own the property?
- Regarding transfer of valid construction permits, do building officials require the operation permit to be in the current owner's name?
- Regarding transfer of valid construction permits, the designer's agreement is with the property owner at the time of evaluation. If they sell the property to someone else, the designer doesn't have a contract with the new owner. At what point does the design professional get notified?
- The survey plat waiver form is onerous.
- There is a requirement for PE's to design improvements to real property based on real data, cannot use GIS. That doesn't apply to onsite soil evaluators.
- Draft policy doesn't address topography on plats.

4. SAP policy.

Mr. Gregory commented that minor revisions were made to the draft safe, adequate, and proper policy based on previous comments from the SHADAC. He asked whether there were additional comments from the committee.

Mr. Pinnix made a motion to approve the draft policy.

Mr. Moore seconded the motion.

All in members of the committee were in favor.

5. Voluntary upgrade and repair policy.

Dr. Degen presented revisions to the draft voluntary upgrade and repair policy which was brought before the SHADAC at a previous meeting. She had received two comments on the draft revisions. First that the draft still requires a hold harmless for all voluntary upgrades. She noted that VDH understands there are concerns with that approach. The second comment was from local health department staff to clarify that most VDH staff are Environmental Health Specialist Seniors.

Chairman Lynn commented that he did not understand why the replacement of a distribution box for a failing system would be a repair with no hold harmless, but if distribution box was replaced as part of a voluntary upgrade it requires a hold harmless.

Mr. Tiller stated that the Code of Virginia says VDH may require hold harmless. The agency decided to require the hold harmless for all voluntary upgrades. He added that he would appreciate suggestions if there is a bright line where a hold harmless is not necessary.

Mr. Pinnix commented that a voluntary upgrade is for the purpose of reducing threats to public health, a minor modification is just changing a component. A repair is something that is required. He believes that putting a new distribution box in the ground to replace an old box for maintenance is a minor modification.

Mr. Moore suggested not requiring the hold harmless for voluntary upgrades designed by the private sector when the design meets the current regulations.

Adjourn

**Virginia Department of Health
Sewage Handling and Disposal Advisory Committee (SHADAC) Meeting
Agenda**

Date: April 14, 2017
Time: 10 am to 2 pm
Location: James Madison Building
5th Floor Main Conference Room
109 Governor Street
Richmond, Virginia 23219

Remote Locations: Fairfax County Health Department
10777 Main Street
Fairfax, Virginia 22030

Wise County Health Department
134 Roberts Avenue, SW
Wise, Virginia 24293

Administrative (15 minutes)

1. Welcome. (5 minutes)
2. Approve agenda. (5 minutes)
3. Review summary from September 21, 2016 meeting. (5 minutes)

Public Comment Period

Old Business (40 minutes)

1. Update from Regulatory Reform Subcommittee. (20 minutes)
2. Issues related to internal VDH policies and processes; *standing agenda item*. (20 minutes)

Break (10 minutes)

New Business (60 minutes)

1. AOSS Regulations revision process. (10 minutes)
2. AOSS Enforcement Manual. (20 minutes)
3. HB 2477 implementation and HB 558 report. (30 minutes)
 - i. GMP 2015-01 update. (20 minutes)

Break (10 minutes)

Continue New Business (65 minutes)

3. Continue HB 2477 implementation and HB 558 report. (30 minutes)
4. SAP policy. (15 minutes)
5. Voluntary upgrade and repair policy. (20 minutes)

Break (10 minutes)

Continue New Business (30 minutes)

6. Definitions for application types. (20 minutes)
7. Private Well Regulations workgroup update. (10 minutes)

Adjourn

Virginia Department of Health (VDH)
Sewage Handling and Disposal Advisory Committee (SHADAC)
September 21, 2016

Primary Meeting Location:

5th Floor, Main Conference Room
James Madison Building
109 Governor Street
Richmond, Virginia 23219

Remote Locations:

Culpeper County Health Department
640 Laurel Street
Culpeper, Virginia 22701

Richmond County Health Department
5591 W. Richmond Road
Warsaw, Virginia 22572

List of Attendees at Primary Meeting Location:

SHADAC Members

Bill Sledjeski – Virginia Association of Professional Soil Scientist
Curtis Moore – Virginia Onsite Wastewater Recycling Association
Cody Vigil – Manufacturers
Sean McGuigan – Manufacturers
Valerie Rourke – Department of Environmental Quality
Adam Feris – Virginia Environmental Health Association
Joel Pinnix – American Council of Engineering Companies of Virginia
Alan Brewer – Virginia Association Counties
Mike Lynn – Home Builders Association of Virginia
Dwayne Roadcap – VDH

VDH Staff and Members of the Public

Lance Gregory – VDH

Dave Tiller - VDH

Jay LaReche - VDH

Kate Nobsch

Reed Johnson

List of Attendees at Remote Location:

SHADAC Members

Channing Blackwell – Virginia Society of Professional Engineers

VDH Staff and Members of the Public

David Fridley – VDH

Dwayne Dixon - VDH

Administrative

1. Welcome.

Chairman Lynn welcomed the committee members, VDH staff and the public to the meeting. He discussed the rules of order for the SHADAC and the purpose of the SHADAC as listed in the Sewage Handling and Disposal Regulations.

Chairman Lynn then commented on a number of emails he had received regarding House Bill (HB) 558. He shared a list of comments and asked to add the comments as an agenda item after the discussion on HB 558.

2. Travel reimbursements.

Mr. Gregory provided members with travel reimbursement forms.

3. Approve agenda.

Curtis move to approve agenda with the addition of number 7, summary of emails from Mike. Cody second, motion carried.

4. SHADAC appointments.

Mr. Gregory announced that Laura Farley has been appointed to represent the Virginia Association of Realtors on the SHADAC. He also commented that VDH is working to fill several open positions and will be sending out information to update expiring appointments.

5. Discuss format of meeting summaries.

Mr. Gregory commented on recent complaints about meeting summaries for SHADAC meeting. Initial complaints were regarding timeliness of posting the meeting summaries. To address those comments Mr. Gregory mirrored more common practices for providing meeting summaries of providing a broad overview of discussion with bullet points. Mr. Gregory then received

complaints that readers could not attribute specific comments to individual members. Mr. Gregory asked the committee for suggestions for improving the summaries.

Mr. Pinnix commented that names should be associated with comments and members should have their organization associated with their name.

Chairman Lynn commented that would verify the committee had a quorum.

Several members commented that the summaries are not intended to be a verbatim record, aside from verbatim recording of motions. One member suggested that the meeting be recorded and the recording posted.

6. Review summary from August 3, 2016, meeting.

Chairman Lynn suggested attaching the sign in sheet from the meeting to the summary.

Mr. Moore made a motion to approve.

Mr. Brewer seconded the motion.

All members were in favor.

Old Business

1. Update from Regulatory Reform Subcommittee.

Mr. Brewer stated that the subcommittee meet a few weeks ago and have a draft list of potential options for regulatory reform. The subcommittee will have a full report at the next SHADAC meeting. The goal is to get the report out before the next meeting to allow time for review.

2. Issues related to internal VDH policies and processes; *standing agenda item*.

Mr. Roadcap commented the Office of Environmental Health Services is looking to create a fourth division for data to move towards data driven decision making. That realignment is currently on hold based on the budget.

3. Update on recommendation to Commissioner; 12VAC5-613-70.

Mr. Gregory provided a response letter from the Commissioner's Office regarding the SHADAC's request to re-assess section 12VAC5-613-70 of the Regulations for Alternative Onsite Sewage Systems (12VAC5-613, the AOSS Regulations).

Mr. Brewer commented that the suggestion for the cost benefit analysis was to have it conducted before starting the regulatory process, possibly through a third party.

Mr. Roadcap commented that the Department of Planning and Budget (DPB) conducts an analysis as part of the executive branch review process, but the agency does look at cost during the development process. Generally there is a meeting between DPB and the agency proposing the regulations to discuss the potential impacts.

Chairman Lynn commented the SHADAC was asking was for a cost benefit analysis of the existing regulations to have something to compare the cost of the proposed revisions.

Mr. Pinnix comment that he believed the SHADAC could take on the task. He asked about sampling data submitted VDH, and that the time and effort to collect samples is the primary cost. He also noted that laboratories are few and far between in some areas, and the samples have a short holding time.

The SHADAC then discussed having manufacturers formalize the cost of approval, developing a subcommittee to review the matter, and reviewing existing sampling data.

4. SAP policy.

Mr. Gregory walked through comments from the previous SHADAC meeting on the draft policy and discussed revisions to the policy. Revisions included the process for reviewing systems when a change in the number of bedrooms had already occurred and clarification regarding the notice of alleged violation (NOAV) process.

Comments from SHADAC members on the draft policy include:

- Some alternative onsite sewage system may have never had an operator visit.
- How will owners know that going to the private sector is an option? Need to encourage the use of the private sector.
- Why would VDH even consider granting a waiver from uncovering the system?
- VDH processing time frames should take longer, and private sector evaluations should be reduced.
- Need to define “functioning as designed”.
- The term waiver and exemption are used interchangeably.
- Process may be a drastic change in some localities, and may be a drastic increase in workload for some districts.
- Decision for waivers should be made by a manager, not an EHS.
- Once VDH puts this in policy, it creates a standard of care for the private sector, whether you intended it to or not.
- What do you do if the d-box is full of water?
- It is a mistake to put this as a priority over other types of applications.
- Maybe have a policy that depends on the request from the building official. If they just want to know about the building being over the system you go one direction, and if they want to know about functionality you have a different process.

- Need more charts and less words. Maybe a simple chart that says what results in an NOAV. Safety issues are not an option, must be corrected.
- If the homeowner is not going to uncover the system themselves, maybe the contractor could provide the evaluation service.

5. Workgroup for revisions to the Private Well Regulations.

Mr. Gregory provided a brief update on the Private Well Regulations Workgroup. The group has developed a list of issues that should be addressed in a Notice of Intended Regulatory Action.

6. Fast-track amendments to the AOSS Regulations; comparison tables.

Mr. Roadcap commented that there are thousands of systems installed under less stringent regulations. When owners seek to repair or voluntarily upgrade those systems, they cannot avoid direct dispersal. Thirty owners have asked for a variance from the regulations for direct dispersal. The language in the fast-track regulation was based on those variances.

Members of the Board of Health felt the language was confusing. Some didn't like reducing the requirements for direct dispersal and that the proposal should go through a routine regulatory process. The Board deferred action on the fast-track proposal.

The SHADAC provided the following comments on the proposal:

- How do you justify including system that go up to 10,000 gpd; seems that could have a substantial impact on groundwater.
- If you have direct dispersal, you have onerous testing. When you get a waiver or variance, then the waiver should also go to the sampling requirements. Relief from one is relief from the other.
- Think this could be done by policy.
- How did we end up with 6 inches being called direct dispersal?
- These standards are harder to meet than the discharge standards.
- Don't know of any product of the shelf that meets this standard, 10/10 is best available technology.
- Seems there is no buy in to include new construction.
- Don't think 10,000 gallons per day is a high number.
- Don't see how voluntary upgrades can apply to commercial systems; §32.1-164.3 references back to §32.1-164.1 which limits voluntary upgrades to 4 dwelling units.

Mr. Moore made a motion that the SHADAC recommend the Commissioner proceed with the fast-track amendments up to 1,000 gallons per day.

Mr. Sledjeski seconded the motion.

The motion passed. Mr. Sledjeski, Mr. Moore, Mr. Vigil, Mr. McGuigan, Mr. Feris, and Chairman Lynn voted in favor. Mr. Pinnix was opposed. Mr. Brewer abstained. Mrs. Rourke left prior to the vote.

New Business

1. SepticSmart Week.

Mr. Roadcap provided a quick update on VDH's efforts to promote the U.S. EPA's SepticSmart Week.

2. NOIRA for AOSS Regulations.

Along with discussion about direct dispersal, the SHADAC also discussion a potential NOIRA for the AOSS Regulations. Members discussed whether to form a separate technical advisory committee (TAC) or uses a SHADAC subcommittee.

Mr. Moore made a motion to recommend VDH create a separate TAC and suggest members of the SHADAC to serve on the TAC.

Mr. Vigil seconded the motion.

Mr. Brewer asked whether the TAC would be established by VDH?

Mr. Pinnix recommended that all commenters be given an invitation to participate.

Mr. Feris seconded the motion.

Mr. Pinnix, Mr. Feris, Mr. McGuigan, and Mr. Vigil voted to include Mr. Pinnix's amendment to the original motion. Chairman Lynn, Mr. Moore, Mr. Sledjeski, and Mr. Blackwell voted against the amendment; the amendment failed.

All were in favor of the original motion to create a separate TAC.

3. Revisions to Maryland's onsite regulations.

Chairman Lynn shared an article regarding recent changes to onsite sewage regulations in Maryland regarding nitrogen reduction. Mr. Johnson commented that every system in Maryland had to be an alternative system. He noted that nothing is likely to happen in the near term on the proposal.

4. Voluntary upgrade and repair policy.

Mr. Tiller presented a draft policy for voluntary upgrade and repair waivers. He commented the policy is trying to help designers and staff identify the correct permit application, voluntary

upgrade or repair and which type of design would require full compliance with the regulations. If an NOAV is needed, it should be a repair. If an NOAV is not needed, it is a voluntary upgrade. The condition assessment attachment helps to determine whether the application is a repair or voluntary upgrade. One change from previous policy, there is no requirement for a hold harmless with a repair waiver.

Mr. Roadcap comments that VDH is trying to provide guidance on when someone has to comply with all of the requirements of the regulations. For example, if you are only replacing a distribution box does the absorption area also have to meet the current regulations. Attachment 2 is one of the bigger pieces of the policy. The other issue is making the distinction between voluntary upgrade and repair.

SHADAC members commented:

- A lot of distribution box replacements come from real-estate transactions, there is no one in the house but the box is damaged. Where does that fall?
- If there is a damaged component, it is a repair permit if it is integral to the function of the system.
- From the private side, what you have to anticipate is whether it is something the LHD would require to be fixed.
- On page 4, the last sentence of the first paragraph is poorly worded. Don't think we want VDH telling the private sector what their responsibilities are.
- What certification statement am I signing if I do one of these designs? The certification statement says that the system meets the regulations. Does my certification statement only apply to the component being replaced?
- Need to clarify which waivers are transferable and which are non-transferable.
- Would it help to talk about component repairs versus dispersal area repairs?
- Why require a soil study if all you want to do is improve the quality of effluent.

Mr. Sledjeski made a motion that the policy be approved.

Mr. Moore seconded the motion.

All were in favor.

5. HB 558 – Interim report #3 feedback.
6. HB 558 – Draft final report feedback.

Members voiced concern that they had not had sufficient time to review the document and there was not sufficient time left in the meeting to discuss.

Mr. Brewer made a motion that SHADAC organizations work with VDH individually to address issues with the report.

Mr. Moore seconded the motion.

Chairman Lynn stated that his concern is that VDH will have to determine whether there is consensus on the proposal and where there are differences of opinion. He suggested having another meeting of the SHADAC to discuss HB 558.

Mr. Pinnix and Mr. Blackwell agreed.

Mr. Moore made a substitute motion that the SHADAC convene another meeting to discuss HB 558.

Mr. Pinnix seconded the motion.

All were in favor.

The next meeting date was set for September 30th at 10:00, based on room availability and committee member availability.

Mr. Gregory stated he'd received concerns that the work done to date was incomplete. He asked members to share with him any information they believed to be missing in the reports.

Members provided the following feedback, with a large focus on 100% inspections:

- Major concern is replacement systems and getting them turned around quickly.
- Installers have concerns that the dual inspection process could create conflicts.
- We have to get away from the installer changing things in the field.
- Think that the OSE needs to be on site for the inspection.
- Make third party inspections an option, and VDH wouldn't be involved in the inspection.
- Maybe have VDH do the final site inspection and have the designer do the installation inspection.
- Think the modification to the certification statement puts the designer in a position that they don't have all the information. Not sure designers are qualified to say what the cost is for installation.
- Come up with one disclosure sheet for everyone.
- Need to make sure VDH modifies local agreements to remove services they are getting out of.
- Put the table of recommendation in date order rather than by category.

Adjourn

**Virginia Department of Health
Sewage Handling and Disposal Advisory Committee (SHADAC) Meeting
Tentative Agenda**

Date: September 21, 2016
Time: 10 am to 3:30 pm
Primary Location: James Madison Building
5th Floor Main Conference Room
109 Governor Street
Richmond, Virginia 23219

Remote Locations: Culpeper County Health Department
640 Laurel Street
Culpeper, Virginia 22701

Richmond County Health Department
5591 W. Richmond Road
Warsaw, Virginia 22572

Administrative (40 minutes)

1. Welcome. (5 minutes)
2. Travel reimbursements. (5 minutes)
3. Approve agenda. (5 minutes)
4. SHADAC appointments. (10 minutes)
5. Discuss format of meeting summaries. (10 minutes)
6. Review summary from August 3, 2016 meeting. (5 minutes)

Public Comment Period

Old Business (25 minutes)

1. Update from Regulatory Reform Subcommittee. (10 minutes)
2. Issues related to internal VDH policies and processes; *standing agenda item*. (5 minutes)
3. Update on recommendation to Commissioner; 12VAC5-613-70. (10 minutes)

Break (5 minutes)

Continue Old Business (65 minutes)

4. SAP policy. (30 minutes)
5. Workgroup for Revisions to the Private Well Regulations. (5 minutes)
6. Fast-track amendments to the AOSS Regulations; comparison tables. (30 minutes)

Break (10 minutes)

New Business (60 minutes)

1. SepticSmart Week. (5 minutes)
2. NOIRA for AOSS Regulations. (15 minutes)
3. Revisions to Maryland's Onsite Regulations. (5 minutes)
3. Periodic review of the Sewage Handling and Disposal Regulations. (5 minutes)
4. Voluntary upgrade and repair policy. (30 minutes)

September 21, 2016

SHADAC Meeting

Page 10 of 10

Break (5 minutes)

New Business Continued (60 minutes)

5. HB 558 – Interim Report #3 feedback. (30 minutes)

6. HB 558 – Draft final report feedback. (30 minutes)

Break (10 minutes)

New Business Continued (50 minutes)

6. HB 558 – Draft final report feedback continued. (50 minutes)

Adjourn

MEMORANDUM

DATE: March 17, 2017

TO: Mike Lynn, Chair, Sewage Handling and Disposal Advisory Committee

FROM: Alan Brewer, Chair, Regulatory Reform Subcommittee

THROUGH: Regulatory Reform Subcommittee: Lance Gregory, Morgan Kash, Curtis Moore, Valerie Rourke

SUBJECT: Options for Regulatory Reform

BACKGROUND: At the April 15, 2015 Sewage Handling and Disposal Advisory Committee (Committee) meeting, members and other stakeholders were asked to identify items they felt should be discussed at future meetings. Committee members then “voted” for items that they thought should be the highest priority for Committee to consider. At the December 2, 2015 meeting, the Committee discussed issues related to regulatory review and revision. During this discussion Committee members noted that many of the priority items identified on April 15, 2015 were related to regulatory reform. As a result of these ongoing discussions, the Committee created a Regulatory Reform Subcommittee (Subcommittee) and directed that Subcommittee to “*assess and propose to the SHADAC, options for regulatory reform*”.

The Subcommittee met five times in 2016. Meeting summaries can be found at the Town Hall website - [Virginia Regulatory Town Hall Home Page](#). The Subcommittee used a systematic process to effectively and efficiently meet its objective. This process included the following steps:

- Affirm the responsibilities and purpose of the Subcommittee.
- Obtain an understanding of the current regulatory framework and conditions.
- Identify areas of the current program that work well.
- Identify challenges/issues with the current program.
- Identify options for regulatory reform.

PROCESS:

Affirm the responsibilities and purpose of the Subcommittee

The Subcommittee recognized, and the Committee confirmed, that the options for regulatory reform should not be limited to regulations. The intent of the directive was to offer options to reform any aspect of the Virginia Department of Health (VDH) Onsite Sewage and Water Services Programs (OS&WSOP). The Subcommittee agreed to a goal to serve as the criteria for development of options to be provided to the Committee.

The goal of the Subcommittee is to present a broad set of options for regulatory and programmatic reform that are protective of public health and the environment, and result in a consumer friendly, flexible, progressive and collaborative program.

Importantly, the Subcommittee did not limit their discussions to existing conditions, authorities, or likelihood of adoption or success. Effectively, the discussions were not bound by “historic baggage” and other constraints.

Obtain an understanding of the current regulatory framework and conditions

Due to the diverse composition, perspectives, and experiences of Subcommittee members, VDH staff provided for the benefit of the Subcommittee an overview of core functions and responsibilities, and regulations administered by OS&WSP (see Attachment 1). This information was a catalyst for developing options.

Identify areas of the current program that work well

The Subcommittee recognized that there are aspects of the existing program and regulations that work well and should not be discounted when considering options for reform. These aspects were discussed at length during meetings. The essence of these discussions can be found in the meeting summaries, particularly the summary of the May 11, 2016 meeting.

Identify challenges/issues with the current program

Before attempting to identify options for reform, the Subcommittee first characterized the challenges and issues with the existing program. In other words, the Subcommittee described the problems before discussing potential solutions. The list of challenges identified by the Subcommittee is included as Attachment 2. The Subcommittee provided this list to the Committee in May 2016 for input and did not receive any comments. The Subcommittee grouped the challenges into four categories: Conflicting Regulations, Program Administration, Paradigm Shift, and Resource. Categorizing the challenges helped the Subcommittee focus their discussions of possible solutions.

Conflicting Regulations includes issues related to contradictions, inconsistencies, incompatibilities, and variations in practices, policies, ordinances, regulations and codes.

Program Administration includes issues related to managing, directing, overseeing and governing program responsibilities.

Paradigm Shift includes issues where a fundamental change in approach or underlying assumptions is necessary for change.

Resource issues are related to financial disparity, inflexibility and reasonableness of the program.

Identify options for regulatory reform

Building on the previous steps in the process, the Subcommittee was able to enumerate options for regulatory reform. It is important to note that the options described below are not recommendations from the Subcommittee, they are simply possibilities for the Committee to evaluate further.

OPTIONS FOR REGULATORY REFORM:

Conflicting Regulations Options

- Codify that VDH will enforce local ordinances when they are more stringent than state requirements.
- Create a model ordinance that localities could chose to adopt so every locality has the same standard for requirements not included in the state regulations.
- Prohibit localities from having local ordinances that are more stringent than state regulations.
- Create a process where VDH's regulations are a higher level view of requirements, and then allow VDH to create an implementation manual to apply the regulations. VDH could then revise the implementation manual without going through the regulatory process every time.
- Combine regulations where possible.
- Conduct a comprehensive assessment of all the regulations to identify and resolve conflict.
- Review all of the policies and codify areas where there needs to be an enforceable requirement rather than guidance.
- Review local ordinances and national industry standards and incorporate good practices in the regulations.
- If a national model code becomes available, shift to the building code model for adopting regulations.
- The Health Commissioner could advocate for a national model code.
- VDH could work with other agencies in a more prescribed manner than just having them sit on the SHADAC and other committees and have the different agencies meet at some frequency to discuss changes and overlap. The first point of discussion at the inter-agency meetings should be to determine where conflicts exist.
- Eliminate the regulations and let local governments or another agency take over the program.

Program Administration Options:

- Dictate by policy that VDH will not enforce local ordinances.
- Codify or mandate that local ordinances must follow the Administrative Processes Act.
- Dictate that appeals of local ordinances must go through VDH.
- Have regional sanitarians to help with consistency across the state.
- Revise regulations so that they only contain requirements that VDH is willing to enforce through the courts.
- Match VDH resources areas that have the highest risk to public health. This would require an assessment of responsibilities, resources and outcomes.
 - Hire a consultant to evaluate VDH's responsibilities/tasks, the associated risk, and where resources should be directed;

-OR-

- VDH evaluates its responsibilities/tasks, the associated risk, and where resources should be directed.
- Provide stakeholders with VDH's goals and measures for the program.
- Change the way VDH inputs and uses data to improve enforcement of alternative onsite sewage system (AOSS) operation and maintenance (O&M).
- Allocate more resources to O&M.
- Administer O&M from the Central Office; evaluate the potential to centralize the initial enforcement phase for O&M (e.g. sending notices to owners).
- Use the private sector more for data collection and entry.
- Propose a statutory or regulatory change so that licensees could have their license revoked if they falsify a document.
- Instead of making the owner responsible for O&M of the system, make the operator responsible or mandate joint responsibility in an effort to make the operator responsible for compliance and enforcement.
- Create a renewable operations permit for all AOSS, not just the large systems.
- Rather than mandating O&M, create more conservative regulations (e.g. more conservative site condition requirements).
- Create a program for conventional onsite sewage system O&M.
- Allow VDH staff to perform non-enforcement contact with owners when potential issues are observed but the issues do not rise to the level of enforcement.

Paradigm Shift Options:

- Use a risk based regulatory model that takes into account items like sensitive sites and lot size.
- Modify the program to a watershed perspective not a statewide standpoint.
- Engage a consultant or contractor outside of VDH to evaluate the potential to refocus efforts to what is really important; don't do things just because they've always been done.
- Evaluate whether there are other VDH programs (e.g. Community Health Services, Health Equity) that can assist with community health issues related to onsite sewage and private wells.
- Incorporate a responsible management entity (RME) model into the regulatory scheme.
- Where there is jurisdictional overlap with other agencies, have VDH provide more information regarding human health impacts.
- Allow licensed entity's to design and install systems outside the regulations provided they are willing to bond the system.
- Require that completion statements are signed by a licensed installer.
- Require that licensed operators get hauler permits; VDH inspector has to certify that the installer is licensed.
- Have VDH establish an internal working group to improve communication between offices and agencies.

Resource Options

- Establish a repair fund.
- Regarding betterment loans, evaluate the potential for a program where VDH backs betterment loans, and determine what can be done to allow the program to better serve low income homeowners.
- Incorporate a funding structure into new fees.
- Charge fees for services that currently do not have a fee.
- Work with the Department of Environmental Quality and other partners to get greater access to the state revolving loan funds for onsite sewage system projects.
- Allow localities to establish sewer service districts countywide. Everyone in the district pays a monthly fee, and when their onsite sewage system fails the service authority is responsible for the repair. Could also use private provider models.

The Subcommittee sincerely appreciates the opportunity to provide this information to the Committee and looks forward to future discussions related to the options presented.

ATTACHMENTS:

1. VDH - Current Regulatory Environment
2. List of Challenges

ATTACHMENT 1

Virginia Department of Health Onsite Sewage and Water Services Program Structure

The Code of Virginia (the Code) established the Virginia Department of Health (VDH) to administer and provide comprehensive environmental health services, to educate citizens about health and environmental matters, develop and implement health resource plans, collect and preserve health statistics, assist in research, and abate hazards and nuisances to the health and the environment. The purpose of these activities is to improve the quality of life in the Commonwealth.

The Division of Onsite Sewage and Water Services, Environmental Engineering, and Marina Programs (DOSWSEEMP) and local health department (LHD) Environmental Health (EH) staff are tasked with administering sections of the Code dealing with onsite sewage systems, alternative discharging systems, and private wells (the Onsite Sewage and Water Services Program). Activities outlined by the Code within the Onsite Sewage and Water Services Program include:

- Long range planning for the handling and disposal of onsite sewage.
- Review (office and field) of applications with corresponding work from private sector designers for subdivision reviews, permit approvals, letters for residential development, and private well construction.
- Issuance of construction permits or denials for applications with corresponding work from private sector designers.
- Field review and system design of certain applications without corresponding work from private sector designers to issue or deny permits for the construction, installation, and modification of a sewerage system or treatment works.
- Development of the Engineering Design Review Panel (EDRP).
- Implement regulations regarding operation and maintenance of alternative discharging sewage systems.
- Conduct regular inspections of alternative discharging sewage systems.
- Establish and implement regulations governing the collection, conveyance transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems.
- Establish and implement regulations regarding the maintenance, inspection, and reuse of alternative onsite sewage systems (AOSS).
- Collection of fees and assessment of fee waivers for onsite sewage system and private well permit applications.
- Establish and maintain a statewide web-based reporting system to track the operation, monitoring, and maintenances of AOSS.
- Establishment and administration of a uniform schedule of civil penalties for violations of onsite sewage and alternative discharge regulations.
- Process appeals for adverse case decisions.
- Establish and implement an onsite sewage indemnification fund.
- Process and grant waivers, where applicable, from treatment and pressure dosing requirements.

- Establish and implement a betterment loan eligibility program.
- Process permit applications and waiver request for voluntary upgrades.
- Administer the Onsite Operation and Maintenance Fund.
- Process safe, adequate and proper evaluations.
- Enter into agreements with any appropriate federal agency to regulate and monitor the collection, transportation, conveyance, treatment and disposal of sewage.
- Establish and facilitate the Sewage Handling and Disposal Appeal Review Board.
- Establish and implement regulations pertaining to the location and construction of private wells.

Under authority provided by the Code, the Board of Health has promulgated the following regulations pertained to the Onsite Sewage and Water Services Program: the Sewage Handling and Disposal Regulations (12VAC5-610), the Regulations for Alternative Onsite Sewage Systems (12VAC5-613), the Fee Regulations (12VAC5-620), the Private Well Regulations (12VAC5-630), the Alternative Discharging Sewage Treatment Regulations (12VAC5-640), and the Schedule of Civil Penalties (12VAC5-650). The primary purpose(s) for each of these regulations is listed below:

Sewage Handling and Disposal Regulations

- To assure that all sewage is handled and disposed of in a safe and sanitary manner;
- To guide the State Health Commissioner in her determination of whether a permit for handling or disposing of sewage should be issued or denied; and
- To guide property owners in the requirements necessary to secure a permit for handling and disposing of sewage.

Regulations for Alternative Onsite Sewage Systems

- To establish a program for regulating the operation and maintenance of AOSS;
- To establish performance requirements for AOSS;
- To establish horizontal setbacks for AOSS that are necessary to protect public health and the environment;
- To discharge the Board's responsibility to supervise and control the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and treatment works as they affect the public health and welfare;
- To protect the quality of surface water and ground water;
- To guide the Commissioner in determining whether a permit or other authorization for an AOSS shall be issued or denied;
- To inform property owners, applicants, onsite soil evaluators, system designers, and other persons of the requirements for obtaining a permit or other authorization for an AOSS; and
- To develop, as DOSWSEEMP deems necessary, best management practices for the purpose of recognizing acceptable methods to reduce pollution from AOSSs.

Fee Regulations

- To establish a procedure for determining the fees for services provided by the department for onsite sewage systems, alternative discharge systems, and private wells;
- To establish procedures for the refund of fees; and
- To establish procedures for the waiver of fees.

Private Well Regulations

- To Ensure that all private wells are located, constructed and maintained in a manner which does not adversely affect ground water resources, or the public welfare, safety and health.;
- To guide the Commissioner in her determination of whether a permit for construction of a private well should be issued or denied;
- To guide the property owner or his agent in the requirements necessary to secure a permit for construction of a private well; and
- To guide the property owner or his agent in the requirements necessary to secure an inspection statement following construction.

Alternative Discharging Sewage Treatment Regulations

- To ensure that discharging systems are permitted, constructed, and operated in a manner which protects the environment and protects the public welfare, safety and health;
- To guide the commissioner in her determination of whether a permit for construction and operation of a discharging system should be issued or denied;
- To guide the property owner or his agent in the requirements necessary to secure a permit for construction of a discharging system;
- To guide the owner or his agent in the requirements necessary to secure an operation permit following construction;
- To guide the owner or his agent in the requirements necessary to operate and maintain a discharging system;
- To guide the Commissioner in her determination of whether a discharging system is being operated in a manner which protects public health and the environment; and
- To guide the Commissioner in her determination of what actions are appropriate to correct violations of this chapter.

Schedule of Civil Penalties

- To establish a uniform schedule of civil penalties for violations of 12VAC5-610 (includes 12VAC5-613), and 12VAC5-640;
- To support enforcement activities necessary to discharge the Board's responsibility to supervise and control the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage as they affect the public health and welfare;
- To support enforcement activities necessary to discharge the Board's responsibility to exercise due diligence to protect the quality of ground and surface waters; and
- To guide the Commissioner in charging civil penalties.

In addition to these regulatory sections, the Board also promulgated the Authorized Onsite Soil Evaluator Regulations (12VAC5-615) to implement, administer, and enforce licensing requirements for onsite soil evaluators. However, the 2007 Virginia General Assembly enacted House Bill 3134, which transferred implementation, administration, and enforcement of licensing to the Department of Professional and Occupational Regulation. DOSWSEEMP is currently in the process of developing a proposed action to repeal 12VAC5-615.

The administration of the Code and these regulations are essentially broken into two staffing segments: DOSWSEEMP staff and local health department EH staff. The general duties of each of those segments is provided below.

Central Office

DOSWSEEMP staff are responsible for programmatic activities such as: providing assistance within the legislative process; regulatory development; policy and guidance development; agency staff and industry stakeholder training; database management; programmatic data analysis; website management; variance processing; indemnification fund processing; product evaluations; EDRP processing; Sewage Handling and Disposal Advisory Committee facilitation; agency representation before the Sewage Handling and Disposal Appeals Board; providing assistance to local health departments for appeals processing; providing technical assistance to local health department when dealing with complex cases; development of agreements with federal and state agencies, where applicable (e.g. Chesapeake Bay Watershed Implementation Plan); long range planning; and overall program quality assurance.

Local Health Departments

The local health department EH staff are responsible for programmatic activities such as: processing applications; issuing or denying permits for onsite sewage systems, alternative discharging sewage systems, and private wells (with or without accompanying work from private sector designers); inspection of onsite sewage systems, alternative discharging sewage systems, and private wells; data entry for onsite sewage system, alternative discharging system, and private well applications, permits, installations, and operation; processing request from local governments for development (safe, adequate and proper evaluations, subdivisions proposals, special use permits, etc.); issuance of operation permits for onsite sewage systems and alternative discharging systems; issuance of inspection statements for private wells; issuance of pump and haul permits; inspection and approval of sewage handlers; providing courtesy reviews of private sector evaluations; sewage and water complaint investigations; administration of enforcement actions when violations of sewage and well regulations are observed; enforcement of required operation and maintenance for AOSS and alternative discharging sewage treatment systems; conducting informal fact finding conferences; conducting Level I and Level II reviews of private sector work; conducting field evaluations and designs for bare applications; inspection of discharge systems; and administration of other activities outline through agreements with local governments.

ATTACHMENT 2

Virginia Department of Health
Sewage Handling and Disposal Advisory Committee
Regulatory Reform Subcommittee
June 20, 2016

Challenges/Issues Categorized

Challenge / Issue	Category
Issues regarding local ordinance enforcement when the site/design fully complies with state regulations, but not local ordinance. There are a lot of localities that have ordinances that do not conform with VDH regulations (e.g. Louisa County ordinance requires cast iron sewer pipe).	Program Administration/Conflicting Regulations
Various layers of regulations and local ordinances that don't always align. That leads to conflict or confusion.	Program Administration/Conflicting Regulations
GMPs at times are treated as regulation and not guidance. They also at times conflict or do not align with all regulations or other policies.	Program Administration/Conflicting Regulations
Customer service and transparency become issues because of the conflicts between the various layers of regulations and local ordinances.	Conflicting Regulations
Historical baggage.	Paradigm Shift
Need more interconnection with other programs within VDH, and other agencies at state and federal levels. When there is potential overlap of VDH programs with those of other state agencies, really need to spell it out in the regulations or MOUs.	Paradigm Shift
Need to look at wastewater as part of a spectrum of water management (e.g. VDH also needs to look at its role in surface water and groundwater quality and management issues).	Paradigm Shift
Community wastewater problems are different than individual system problems, but the current program treats them the same.	Paradigm Shift
What is a "failing system"? Need to distinguish between repairs and voluntary upgrades.	Paradigm Shift
The regulations provide somewhat of a preferential benefit to someone that can afford to install an alternative system on sites where less expensive conventional systems cannot be used (e.g. direct dispersal - poor person couldn't develop the property but a rich person can).	Paradigm Shift
Installers upset that unlicensed contractors are still getting their system installations approved.	Paradigm Shift

Challenge / Issue	Category
EPA design manual says onsite sewage programs should become more involved with watershed protection planning. This is not currently the case in Virginia. For instance, a locality has an impaired waterway. The locality determines the best way to address that issue is stream buffers, so the county spends significant funds on buffers. But then under state regulations developer installs an onsite sewage systems within the buffer because it meets the regulations even though it's not part of the County's plan to improve the impaired waterway. This relates to two other challenges noted below: (1) Need to look at wastewater as part of a spectrum of water management, and (2) Need more interconnection with other programs within VDH, and other agencies at state and federal levels.	Paradigm Shift
Concerned about permits for alternative systems being issued in areas that clearly shouldn't be developed (e.g. sensitive receiving environments) even though the site meets the minimum regulations.	Program Administration / Paradigm Shift
Are VDH resources aligned with the goals of the program? (first flush vs. ongoing maintenance).	Program Administration
Lack of enforcement on O&M, and regulatory oversight.	Program Administration
Perception that VDH staff think just because a PE signs off on a design they (VDH staff) have to permit the design.	Program Administration
Issue with consistency and lack of enforcement statewide, possibly resulting from the elimination of the regional sanitarians.	Program Administration
Blurred line when a VDH employee steps over from being a regulator to being a designer.	Program Administration
Information dissemination is a challenge, especially regarding O&M.	Program Administration
The fee structure for repairs. Should repair permits really be free for everyone? Should we even be reclassifying repairs versus construction permits? Why not make everything a construction permit that must fully comply with the regulations? Should there be a sliding scale for the cost of repairs based on the income of the household serviced by the system?	Program Administration / Resource
The Betterment Loan program doesn't work for low income homeowners.	Resource
There is one regulatory standard that has no flexibility to deal with income. Regulations can facilitate grants/exemptions, but there needs to be another financial solution from an external source.	Resource
How do you handle case with a \$10,000 trailer on a \$5,000 lot that needs a \$20,000 septic system?	Resource

Sewage Handling and Disposal Advisory Committee 4/14/17 Meeting
Issues related to internal VDH policies and process.

- If a D-box is required as part of the permit and it fails (crumbling due to age, or just silted up) – isn't that a repair?
- Local health departments / districts issue policies on State Regulations or GMPs. Has to stop or at least these policies need to be countersigned by the Central office for consistency.
- Where is the authority for local health departments to develop office, or district wide policies?
- Why does VDH need a hold harmless signed to replace a distribution box that is going bad but hasn't failed and wouldn't need hold harmless when its failed to the point where it's on the ground and requires an NOV.
- Clear explanation of the various types of construction permits and what is required for each type of submittal. For instance – what is a minor repair? What is a minor modification?
- Are survey plats required with each application? What is a survey plat? What is a site plan? What is GIS?
- We are finding that many of the pumpers are not cleaning the tanks out when they are doing the pumps in our region. My concern is that we are finding the tanks with a sludge depth that will and is causing pass through of the sludge to the septic field.
- Voluntary upgrade required for component replacement, this is not an upgrade or should not require a hold harmless.
- Lack of time line to issue operations permits: Inconsistency in requirements for OP.
- Inconsistency of Notice of recordation Loudoun
- Application of termite proximity to wells: Loudoun requires a deed restriction; If we specify no termite treatment or Borate in the permit, why do some require a letter from the owner
- Requirements for plats for component replacement.
- Concerned with local county ordinances that do not allow state approved systems installed as approved.
- Concerned with the lack of education of VDH health regulators, and VDH county staff in the design review and inspection of AOSS's.

May ____, 2017

TO: District Health Directors
District Environmental Health Managers

GMP#2017-01

THROUGH: Marissa J. Levine, MD, MPH, FAAFP
State Health Commissioner

THROUGH: Allen Knapp, Director
Office of Environmental Health Services (OEHS)

FROM: Dwayne Roadcap, Director
Division of Onsite Sewage and Water Services, Environmental
Engineering and Marina Programs

SUBJECT: GUIDANCE MEMORANDUM AND POLICY #2017-01:

Enforcement manual for the Alternative Onsite Sewage System (AOSS)
Regulations, 12VAC5-613, including use of the Civil Penalty Regulations,
12VAC5-650.

Appendices:

A	Chart of the appropriate violation fees.
B1	Civil Summons Ticket Notice for issue unrelated to O&M.
B2	Civil Summons Ticket Notice and NOAV for missing O&M report.
C1	Civil Summons Ticket.
C2	Information FAQ to include with civil summons ticket.
D1	Business process for failing onsite sewage system or issue not related to O&M.
D2	Business process for missing O&M report—civil penalty only.
E	Motion and Notice for Hearing.
F	VENIS data entry.
G	Letter to close the ticket and NOAV.
H	Example letter for agreement.
I	Letter of notice of O&M requirements.

Introduction

The Board of Health (hereinafter “Board”) is charged with the duty to protect public health in the safe collection, conveyance, transportation, treatment and disposal of sewage and may promulgate regulations to supervise and control sewage disposal by onsite sewage systems, alternative discharging sewage systems, and in the maintenance, inspection, and reuse of alternative onsite sewage systems (hereinafter AOSS).¹ The State Department of Health, under the supervision of the State Health Commissioner, is tasked with the ministerial duty of enforcing the Board’s regulations.²

On December 7, 2011, the Board enacted the final AOSS Regulations. Since the enactment of the AOSS Regulations, staff has implemented voluntary compliance measures with owners for sampling and operation and maintenance (O&M) of small AOSSs.³ Staff has also sought voluntary informal compliance for the annual AOSS operator visit.⁴

With voluntary informal compliance, VDH has achieved approximately 40% statewide compliance with the submission of O&M and sampling requirements. This policy outlines VDH’s continued enforcement strategy to reach 100% compliance. The Office of Environmental Health Services (OEHS) will continue to work with district staff on monitoring compliance rates with respect to the following:

1. The percent of failing AOSSs repaired within 60 days.
2. The percent of unassigned operator reports submitted to VDH for review.
3. The percent of AOSSs without a current operator report indicating the system is functioning properly.
4. The percent of AOSSs without an up-to-date sampling event.

The goal is to ensure 100% compliance within a reasonable timeframe through active monitoring and oversight. This policy emphasizes and expects a renewed effort of voluntary compliance through informal communication means (i.e., phone calls, notice letters, and in-person conversations that educate owners) and formal compliance (i.e., issuance of a notice of alleged violation, letter of agreement, case decision, civil

¹ See Virginia Code § 32.1-164.

² See Virginia Code § 32.1-16.

³ The AOSS Regulations require a sampling event within 180 days of system operation and thereafter once every five years for generally approved treatment devices (12VAC5-613-100.D), or semi-annual sampling for non-generally approved treatment units (12VAC5-613-100.E). The AOSS Regulations at 12VAC5-613-10, define small AOSS as “an AOSS that serves no more than three attached or detached single-family residences with a combined average flow of less than or equal to 1,000 GPD, or a structure with an average daily sewage flow of less than or equal to 1,000 GPD.”

⁴ The AOSS Regulations, at 12VAC5-613-10, defines large AOSS as “an AOSS that serves more than three attached or detached single-family residences with a combined average daily sewage flow greater than 1,000 GPD or a structure with an average daily sewage flow in excess of 1,000 GPD.” The operation and maintenance requirements for large AOSSs are outlined in 12VAC5-613-100, 110, 150, and 160.

penalties, etc.). The District Health Director and Environmental Health (EH) Manager will work in concert with OEHS utilizing both informal communication and formal compliance outlined herein, including the use of civil penalties, to bring about improved regulatory compliance. The goal is to focus on correction of public health threats to protect health and groundwater.

This policy outlines the compliance procedures that Virginia Department of Health (VDH) staff must use to notify owners of alleged violations of the AOSS Regulations and the full range of compliance procedures available. While staff begins with the least adversarial method appropriate to the circumstances, the selection of a procedure lies wholly within VDH's discretion, law, and regulation. VDH encourages property owners to have an open discussion during the compliance process to ensure that compliance actions support the goals and mission of VDH to protect public health and groundwater.

Notifying Owners

Elements of a Notice of Alleged Violation

A Notice of Alleged Violation (hereinafter "NOAV") is generally the first step towards formalized enforcement of a violation of VDH laws or regulations. In order to avoid issuing a case decision subject to appeal in accordance with the Administrative Process Act (APA), an NOAV should be carefully worded to merely allege a violation of VDH laws and regulations, as the violation has not yet been conclusively established. An NOAV must be made in writing and must be either hand-delivered or sent via certified mail to the alleged offender/property owner. At a **minimum**, the NOAV must cite:

1. The statutes or regulations either being violated or having been violated;
2. The factual basis for believing the alleged violation is occurring or has occurred; and
3. A request for specific actions by the alleged offender with specific timelines for accomplishing those actions.
4. Appeal rights and, if an informal fact-finding conference (hereinafter "IFFC") is scheduled, when and where the IFFC will be heard.

Any written correspondence by the agency that includes the elements listed above may be considered an NOAV. The NOAV should also cite the penalties associated with the alleged violation. In many situations, the preferred approach is to schedule an IFFC concurrent with the issuance of NOAV so facts which culminated in the alleged violation can be better developed and ascertained and a case decision can be issued.

A model NOAV will contain the following:

1. A named responsible party or owner as verified through the VDH records or other appropriate means. The name may or may not match the name on the permit;
2. If known, the construction and operation permit numbers and issuance dates;
3. A statement that VDH has reason to believe that the owner may be in violation of applicable laws, regulations, or permit requirements;
4. Disclaimer that the NOAV is not a case decision under the APA;
5. A description of each alleged violation (the observations) – what was seen by VDH staff, or reported by someone who contacted VDH. The observations should correlate with the legal requirements that follow. Observations are not speculations, opinions, or conclusions. In particular, the NOAV should not conclude that the observed or reported condition “has violated” or “is in violation of” an environmental requirement;
6. The specific provision of law, regulation, permit condition, or order that has been allegedly violated (the legal requirements), including a citation to the requirement and a concise quotation of the applicable portion of the requirement (not paraphrased). Legal requirements are set out adjacent to the related observations;⁵
7. Statement of the enforcement authority and options available to VDH;
8. Statement of requested future actions and a request that the owner respond within a specified time period, usually 30 days, detailing the corrective action he or she has or will take, this can be memorialized in a Letter of Agreement (see below);
9. Request that the owner advise VDH staff of any disputed observations or other pertinent information;
10. If an IFFC is not concurrently scheduled with issuance of the NOAV, then the NOAV must include a process for requesting an IFFC to determine whether or not a violation has occurred; and
11. Appropriate VDH contact information.

⁵ The legal requirements, including citations, are labeled separately from the observations to make clear that both observations and legal requirements are included, that they are separately identified for each alleged violation, and that a specific provision has been cited for each legal requirement.

When available, staff should attach supporting documentation that support the observations made in the NOAV to assist the owner in understanding the alleged violations. These materials can include inspection reports, photographs, maps, and copies of relevant regulations or laws.

VDH staff should provide the NOAVs in a timely and appropriate manner to the owner – preferably within 30 days of discovery of the alleged violation. Any VDH staff with an appropriate written delegation of authority can sign an NOAV.

Successful delivery of the NOAV to the property owner is critical to ensuring that the owner is aware of the nature and significance of the alleged violations. Copies of an NOAV can be sent concurrently to other persons as necessary (e.g., designer, contractor, or agent) to ensure that the NOAV has reached responsible parties. VDH staff must ensure delivery confirmation or delivery receipt because receipt by ordinary mail is uncertain. For the majority of cases, staff will know that first class mail has provided the required notice when the responsible party contacts them as directed in the instructions in the NOAV. If no response has been received within 30 days (or sooner as appropriate) from the date of the NOAV, or if the owner indicates he or she is unwilling to resolve the matter by consent, then a follow-up letter with a copy of the NOAV must be sent with delivery confirmation or delivery receipt. If an owner refuses delivery, other means, such as service of process by sheriff's deputy or hand-delivery, must be employed.

Use of the NOAV

VDH staff notifies owners of potential regulatory violations through the issuance of an NOAV drafted once staff has observed or documented a suspected violation. An NOAV differs from a case decision in that it functions as the notice to the owner that the local health department (hereinafter "LHD") reasonably believes a violation exists but does not definitively find the violation occurred. An owner has the right to due process provided through an IFFC before the agency renders a case decision definitely finding a violation occurred.⁶ Anytime the LHD reasonably believes a violation of the regulations has occurred and enforcement is necessary, an NOAV should be drafted.

⁶ An NOAV should not state that an owner "has violated" or "is in violation of" an environmental requirement, because that might imply incorrectly that VDH has made a case decision. The owner is entitled to notice and a process to dispute alleged violations before a case decision is made or any corrective action imposed. Corrective actions can be suggested in an NOAV as described in 12VAC5-610-170. Under the Administrative Process Act (APA), Va. Code § 2.2-4001:

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit (emphasis added).

Before issuing an NOAV for a missing O&M report, staff should ensure that the owner received letters (Appendix I and Appendix J) from the Department notifying them of the requirement to submit the O&M report annually. Staff may follow up on the letter with phone conversations, e-mail, or further letters notifying owners of their statutory duty to file O&M reports before issuing the NOAV, however, it is not required. Any communications with the owner notifying them of the O&M requirements should be noted in the Department's file for that property.

Once VDH staff has issued an NOAV, staff should consider contacting the owner by telephone, e-mail, or allow for an informal meeting at the local office to discuss any noted violations. Open communication during the compliance process allows the agency to communicate the potential health threats from regulatory violations and work with the owner to achieve compliance. VDH staff should ask the owner what steps he or she is taking to abate the alleged noncompliance and when that action will be completed. Once staff and the owner agree on steps to be taken and an appropriate timeframe for correction, staff should document this agreement in a Letter of Agreement. (Appendix H). VDH staff should always ask the owner to provide reliable written or electronic verification of on-going or planned actions and VDH staff should verify the owner's corrective actions onsite. Staff should document all contacts, requests to the owner, and owner actions in VENIS and may send an acknowledgement letter as appropriate. If the owner does not return to compliance within 30 days (or longer time as circumstances or Letter of Agreement allows), staff should schedule an IFFC or consider whether heightened enforcement is necessary to obtain compliance.

After issuing an NOAV, staff must track and follow-up on any action to verify the owner has returned to compliance with applicable regulations. Staff must document all activity associated with the enforcement matter in VENIS. Staff should check every deadline as required by law or Letter of Agreement within 30 days of the deadline or as soon as practicable. VDH staff may pursue enforcement for alleged violations found during subsequent inspections or record reviews. To confirm the owner has returned to compliance, staff may obtain written or electronic confirmation from the owner, conduct a follow-up inspection, or both. Staff will document all correspondence and follow-up inspections in the file and VENIS.

Subsequent Actions

If the owner agrees to, completes, and documents a satisfactory return to compliance, staff should send an acknowledgement (Appendix G, Closure Letter) and close the matter in VENIS. If the owner fails to adequately respond to the NOAV within 30 days or fails to return to compliance within 60 days or other agreed timeframe, staff should promptly schedule an IFFC, or seek consultation with OEHS for further enforcement action.

If an owner cannot meet a date in their plan as written in the Letter of Agreement to return to compliance, the owner should notify VDH immediately and provide documentation why they are unable to do so. VDH staff may extend the date for an

owner action for good cause if the owner has notified VDH as soon as those circumstances became apparent. Extensions must be documented to the file and may require a new Letter of Agreement or consent order. The extension should clearly state that it does not relieve the owner from his or her obligation to comply with applicable environmental regulations. If an owner misses a deadline without good cause or fails to notify VDH, staff should promptly schedule an IFFC and consider heightened enforcement action, including civil penalties, as detailed below.

Heightened Enforcement

Permit Revocation and Null and Void

Revocation is a discretionary act that may be executed by the Commissioner or by the District Health Director or EH Manager as designee of the Commissioner pursuant to the agency's delegation of authority. The District Health Director or EH Manager must consult with OEHS before seeking to revoke or declare a permit null and void. An IFFC is required prior to revoking any approval or declaring a permit null and void. Under the AOSS regulations, the Commissioner may revoke a construction permit or inspection statement if she or he finds:⁷

1. Any of the conditions of the permit or statement have not been complied with;
2. There has been a violation of the applicable regulations for which no variance has been granted; or
3. Facts become known which reveal that a potential health hazard would be created or that the ground water resources would be adversely affected if the proposed construction were to be undertaken.⁸

The third circumstance of revocation may be applied as an enforcement mechanism when there is some environmentally hazardous site condition that existed prior to the issuance of the permit, but was not revealed to or discovered by the local health department (LHD) until after the permit was issued. However, in circumstances where the environmentally hazardous site condition did not exist until *after* the permit was issued, the proper enforcement mechanism would be to declare the permit null and void. Under the AOSS Regulations, a construction permit can be declared null and void when (i) conditions such as house location, sewage system location, well location, topography, drainage ways, or

⁷ Pursuant to 12 VAC5-613-40, the AOSS Regulations are supplemental to the Sewage Handling and Disposal Regulations and all procedures pertaining to enforcement, minimum requirements for filing applications, and processing of applications, including appeals and case decisions contained in SHDR shall apply to permitting of alternative onsite sewage systems.

⁸ See 12VAC5-610-300.C.

other site conditions are changed from those shown on the application or (ii) conditions have changed from those shown on the construction permit.⁹

Consent Order

A consent order is a formal, voluntary agreement between VDH and the property owner stemming from violations of applicable laws or regulations signed by the State Health Commissioner and property owner. A consent order generally states the acts or omissions the owner must undertake to remedy a public health issue. As a practical matter, a consent order is an alternative to criminal prosecution or other lawfully administered penalties, but those other mechanisms of enforcement can be reinstated should the provisions of the consent order be violated. A consent order is a product of free will and, as such, it is the most flexible.

A consent order can require and set specific actions and timelines not required by VDH laws and regulations. A consent order should be considered after informal compliance has failed and the owner has not met the conditions of any Letter of Agreement. If a material violation of the order occurs, then the order is enforceable in the local circuit court through a variety of remedies that judges have discretion to impose. A consent order constitutes a binding legal agreement; if the owner fails to comply with its provisions then a judge may enforce the order.

The primary goal of a consent order is to achieve compliance with the applicable regulations by mutual consent. The onus is on VDH to persuade the owner to agree to all provisions contained in the Order, even when some provisions may impose burdens, waive rights, and call for monetary payments on the part of the owner. Achieving consent requires the powers of negotiation and tactfulness; it requires the ability to communicate with the owner in a non-threatening manner.

VDH cannot explicitly threaten criminal prosecution in order to compel a regulant to sign the order; the order must be the product of a voluntary agreement free from any coercion or deception on the part of VDH. The prospect of criminal prosecution should certainly be mentioned to apprise the owner of possible enforcement tools, but the subject should be broached in a tactful, non-threatening manner.

Before drafting a consent order, the District Health Director or EH Manager must contact OEHS for guidance. The recommended process for drafting, finalizing and recording the order is as follows:

1. The LHD is primarily responsible for drafting the provisions of the order. In drafting the order, the LHD should consult OEHS for substantive or stylistic guidance.

⁹ See 12VAC5-610-300(A)(1).

2. Once the order is drafted, submit to OEHS. OEHS staff and the Attorney General's office will review the order and will provide suggested edits and comments as necessary.
3. The order will then be reviewed, revised if necessary, and approved by the Commissioner for sharing with the property owner or regulant. OEHS will finalize the draft consent order accordingly and return the document to the LHD.
4. The LHD will draft two originals of the consent order and provide them to the owner for discussion. If the owner is satisfied with the content of the order and assents to its provisions (following consultation with legal counsel, if desired), then the owner will sign both copies of the document before a notary public, and submit both copies to OEHS for presentation to the Commissioner for endorsement.
5. If the Commissioner is satisfied with the content and provisions of the order upon second review, the Commissioner will sign both copies of the document. One copy will be sent back to the named party so that he or she may record the order; the other copy will be sent to the LHD to retain in the records for the purposes of monitoring compliance with the order and for potentially initiating an enforcement action should the named party violate the provisions of the order.

In terms of timing, the consent order is an enforcement mechanism that should be pursued only after informal and formal compliance methods have been exhausted, after an NOAV has been issued, a Letter of Agreement has not been followed, and following (or during) an IFFC. If the owner still has not abated or fixed the problem after the LHD has pursued these preliminary informal communications and formal enforcement mechanisms, then VDH should seek compliance through a consent order before generally pursuing criminal enforcement except for extraordinary circumstances.

Criminal Prosecution

Va. Code §32.1-27 makes the violation of any regulation of the Board of Health a Class 1 misdemeanor¹⁰ punishable by a fine, imprisonment, or both.¹¹ Health districts seeking to proceed criminally against an owner, must inform OEHS and the Deputy Commissioner prior to seeking a summons from a jurisdictional magistrate and pursuing misdemeanor

¹⁰ Class I and Class III misdemeanors. Va. Code §18.2-11 authorizes the following punishments for the conviction of misdemeanors: (a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both. (b) For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both. (c) For Class 3 misdemeanors, a fine of not more than \$500. (d) For Class 4 misdemeanors, a fine of not more than \$250.

¹¹ Board of Health regulations may prescribe a different penalty for a specific violation in which case the prescribed penalty will supersede §32.1-27 and must be applied.

criminal charges in general district court by submitting an event notification in accordance with VDH's correspondence manual. The Deputy Commissioner must be informed briefly in writing of the case and the informal communications and formal compliance measures that have been taken to justify a decision to pursue criminal enforcement. The Deputy Commissioner will communicate directly with health directors and environmental health managers should additional detail be required or the deputy commissioner disagrees with the decision.¹²

Civil Summons Ticket

The Civil Summons Ticket is an enforcement tool to ensure compliance with regulatory provisions and protect the public health and environment. Civil penalties are supplemental to other enforcement activities. Staff may initiate a civil penalty enforcement action while simultaneously pursuing other lawful enforcement actions, such as permit revocation and null and void of a permit. However, criminal prosecution may not be pursued concurrently with civil penalties unless the violation contributes to, or is likely to contribute to, pollution of water supplies or the contraction or spread of infectious diseases.

Va. Code §32.1-164(J) required the Board of Health to establish a uniform schedule of civil penalties for violations of regulations promulgated pursuant to Va. Code §32.1-164.B. The Civil Penalty Regulations, at 12VAC5-650, provide a schedule of violations that may incur a civil penalty and support enforcement activities necessary to discharge the Board's responsibility, including the control over the safe and sanitary collection, conveyance, transportation, treatment and disposal of sewage as well as protecting the quality of ground and surface waters.¹³

A Civil Summons Ticket may be issued for any violation listed in 12VAC5-650-50 and 12VAC5-650-60 of the Regulations.¹⁴ The authority to implement the Schedule of Civil Penalties is delegated to the District Health Director from the Commissioner of Health, and the District Health Director may delegate to the EH Manager.¹⁵

Considerations for Issuing a Civil Summons Ticket

Before pursuing civil penalties as an enforcement option, the district health director and EH Manager for the LHD must consult with OEHS and should evaluate multiple considerations, including, but not limited to:

¹² See the Environmental Health Law Manual for further detail.

¹³ See 12VAC5-650-20 for full purpose and authority of the Regulations.

¹⁴ The schedule of civil penalties applies to the Sewage Handling Regulations, 12VAC 5-610; the Alternative Onsite Sewage Regulations, 12VAC5-613-10; and the Alternative Discharging Onsite Sewage Regulations, 12VAC5-640-10.

¹⁵ See 12VAC5-650-40(C).

1. The gravity of the alleged violation and its impact on public health and the environment;
2. Whether the LHD has attempted to achieve compliance by informal compliance such as educating the alleged offender on the requirements of the law and the public health hazards associated with the alleged violations;
3. Whether the alleged offender has been cooperative and has taken steps to remedy the alleged violation, i.e. have they submitted a Letter of Agreement and followed the plan;
4. Economic considerations and any financial hardship demonstrated by the alleged violator;
5. The likelihood that the imposition of civil penalties will provide sufficient incentive for the alleged offender to remedy the public health threat;
6. Whether the LHD has ensured that its database for operation and maintenance (O&M) reports is up to date¹⁶;
7. Whether imposing civil penalties in lieu of criminal prosecution or other administrative remedies is appropriate given the circumstances.

Civil Penalty Ticket Administrative Process:

Adjudication of civil penalties will take place in the General District Court of the jurisdiction where the alleged violation occurred.¹⁷ In bringing the civil suit to court, the Department must demonstrate by a preponderance of the evidence that the alleged violation occurred, which means that the Department must show it was more likely than not that the person who received a ticket actually committed the alleged violation. If the judge finds that the Department has satisfied its burden of proof, then the judge will order the offender to pay the appropriate civil penalty. To issue a civil summons ticket, staff must take the following steps (see also Appendix D1 and D2):

1. After verifying an alleged violation exists, the LHD should send an NOAV. If the alleged violation is a missing O&M report, staff must check property records to ensure that the owner has received at least one letter (Appendix I), preferably two (Appendix J), notifying them of their statutory duty to submit an O&M report before sending the NOAV. Staff should document all communications, meetings, phone conversations with the owner regarding the submittal of an O&M report.

¹⁶ Before a LHD can consider sending a NOAV and Notice of Civil Summons Ticket for a missing O&M report, the LHD must demonstrate to OEHS that it has less than 3% of reports not attached to facilities to avoid excessive backlog in verifying that reports are missing. All districts should have at least 97% of reports attached to properties or facilities before July 1, 2017.

¹⁷ The General District Court hears civil cases with claims \$4,500 or less and shares authority with the circuit court for claims between \$4,500 and \$25,000.

2. Staff may concurrently schedule an IFFC in the NOAV, unless the alleged violation is a missing operation and maintenance (O&M) report pursuant to 12 VAC5-613-190. If staff has been unsuccessful in achieving compliance through routine reminder letters in obtaining the O&M report, staff need not schedule an IFFC, staff may contact OEHS for Civil Summons Ticket Eligibility as described below in Step 4.
3. Staff conducts IFFC and works with owner to develop a plan of action to return system to compliance, and draft a Letter of Agreement (Appendix H). If owner does not show up at IFFC or demonstrates no interest in developing a plan of action, staff may render case decision and contacts OEHS to initiate a Civil Summons Ticket.
4. Staff presents case to OEHS for Civil Summons Ticket eligibility. Staff must document attempts at gaining compliance through communications, meetings, Letters of Agreement, and/or routine O&M letters (Appendix I and Appendix J). If OEHS agrees that a Civil Summons Ticket is the correct enforcement tool, LHD and OEHS will provide a written recommendation to the Deputy Commissioner for Health. Once the Deputy Commissioner agrees that a Civil Summons Ticket is warranted, a Notice of Civil Summons Ticket (Appendix B1 or B2 depending on whether the violation is related to an O&M report) is issued to the owner or operator from the LHD.
 - a. The Notice of Civil Summons Ticket details the alleged violation, what corrective actions are sought, and consequences of inaction (i.e., notice that if the violation remains uncorrected for at least **30 days**), a Civil Summons Ticket (Appendix C1 and C2) will be issued for the violation with the appropriate violation fee.
 - b. A Civil Summons Ticket does not have to be issued in 30 days after issuance of a Notice of Civil Summons Ticket, but there must be 30 days between issuance of the Notice of Civil Summons Ticket and the Civil Summons Ticket.
5. If after issuing the Civil Summons Ticket Notice, the suspected violator does not demonstrate that the observed violation has been corrected within 30 days and has not contacted the LHD, the District Director or EH Manager will contact OEHS for issuance of a Civil Summons Ticket. A Civil Summons Ticket is not required to issue; a decision to issue a Civil Summons Ticket will encompass the factors listed in the Considerations for Civil Summons Ticket above. The Civil Summons Ticket (Appendix C1 & C2) will be delivered to the suspected violator by either hand delivering, posting at property owner's residence, or by certified mail.

6. The person issued the Civil Summons Ticket may contact the LHD to pay the fee and demonstrate that they have corrected the violation by providing written proof or requesting a LHD site visit. If the owner contacts the Department and states that they intend to correct the violation but cannot accomplish the correction within the 30 day time frame, the EH Manager, in consultation with OEHS, may give the owner further time to correct the violation.
7. If the person pays the Civil Summons Ticket within 30 days, the EH Manager will note the payment in VENIS, confirm the violation has been corrected (through documentation or site visit), issue a Closure Letter (Appendix G) and not seek a Motion and Notice of Hearing (Appendix E). If the violation has not been corrected, the EH Manager may proceed with scheduling for court. The EH Manager or District Director may wish to waive the Civil Summons Ticket as new facts have been discovered, in such case, contact OEHS for discussion and next steps. If the Civil Summons Ticket is waived, use the Closure Letter (Appendix G).
8. If the Civil Summons Ticket is not paid within 30 days or the violator has chosen to contest the violation in court, the EH Manager will contact appropriate staff at OEHS before filing a Motion and Notice of Hearing in the General District Court to ensure proper scheduling for the Assistant Attorney General.¹⁸
9. OEHS will contact the EH Manager and provide the availability for the Assistant Attorney General. After getting possible dates for legal representation from the Assistant Attorney General, the EH Manager will obtain an acceptable court date from the appropriate General District Court and file a Motion and Notice of Hearing (Appendix E), attaching the Civil Summons Ticket (Appendix C1&C2) to the Motion. The EH Manager will share this date with OEHS, record it into VENIS, and schedule the court appearance with the Assistant Attorney General.
10. The EH Manager will ask the Sheriff (for the jurisdiction from which the violation arises) to serve the Motion and Notice of Hearing along with the Civil Summons Ticket on the suspected violator. The Sheriff will deliver the motion and the court date is set. The EH manager will notify OEHS and the Assistant Attorney General upon service of the Civil Summons Ticket.

¹⁸ The Motion and Notice for Hearing is found at <http://www.courts.state.va.us/forms/district/dc371.pdf>.

11. On the court date, the EH Manager, other VDH personnel who assisted in the investigation of the case, and the Assistant Attorney General who represents the Department, will appear in court to bring the civil suit forward. The EH Manager and staff must be prepared to present their evidence of why a civil penalty is warranted for the violation. In presenting the case, staff must bring a copy of relevant inspection notes, and all documents and photographs relevant to the Department's investigation of the violation, including a copy of the pertinent regulations to court. Staff should be prepared to testify to all informal communications and formal compliance attempts made by the VDH.
12. Once staff has issued a Civil Summons Ticket, subsequent Civil Summons Tickets based upon the same set of facts can be issued every 10 days at the higher fee found in 12VAC5-650-60 until the violation is corrected up to the statutory limit of \$3,000. Before any subsequent tickets are issued, staff should contact OEHS for consultation and documentation.
13. If after the Motion and Notice for Hearing and Civil Summons Ticket has been served, the owner wishes to pay the ticket and return to compliance, or the EH Manager wishes to no longer pursue the Civil Summons Ticket, the EH Manager must contact the OEHS and the AG's Office to remove the Civil Summons Ticket from the Court's docket. A Civil Summons Ticket may be removed from a court's docket at any time that the Department no longer wishes to pursue enforcement. If the Department decides not to pursue enforcement, a Closure Letter, (Appendix G), will be sent to the owner or operator.

Appendix A

Chart of Violations and Penalty

Offense	Install or operate without a permit	Discharge effluent onto the ground or the water	Failure to obtain, maintain or monitor AOSS	Failure to submit report or inspection	Unlawful transportation of sewage	Any other applicable regulatory violation: 12VAC5-610, 12VAC5-613, 12VAC5-640
First Offense	\$100	\$100	\$50	\$50	\$100	\$25
Second or Additional Offense	\$150	\$150	\$100	\$100	\$150	\$50

Appendix B1

<INSERT DATE>

NOTICE OF CIVIL SUMMONS TICKET

<INSERT OWNER NAME>

CERTIFIED MAIL

<INSERT ADDRESS>

Dear<INSERT OWNER NAME>

RE: NOTICE OF CIVIL SUMMONS TICKET:

<INSERT PROPERTY IDENTIFYING INFORMATION>

On <DATE>, the <LOCALITY> Health Department observed <SUSPECTED VIOLATION WITH APPROPRIATE CODE REFERENCE> on your property located at the above referenced property. On <DATE>, you received a Notice of Alleged Violation (NOAV) detailing the alleged violation as well as suggested actions to help resolve concerns associated with the alleged violation. More than 30 days has elapsed since you received the NOAV and you did not request an informal fact-finding conference (IFFC) to discuss the NOAV.

Please understand that if you do not take the requested actions and correct the suspected violation or schedule an IFFC to discuss the suspected violation with the <LOCALITY> Health Department within 30 days of your receipt of this letter, then the <LOCALITY> Health Department may initiate a civil enforcement action against you in <LOCALITY> General District Court pursuant to Virginia Code § 32.1-164(J).

To avoid the possible civil enforcement action, including an initial \$<FIRST OFFENSE FEE> Civil Penalty Fee and \$<SECOND OFFENSE FEE> for each additional civil summons ticket issued every ten days after issuance of the initial civil summons ticket where the violation remains uncorrected, please arrange for an IFFC with the <LOCALITY>Health Department or take the requested actions.

You can schedule the IFFC by contacting <EH SPECIALIST> at <PHONE NUMBER>, <ADDRESS> within 30 days of your receipt of this letter.

If you have any questions regarding this letter or believe that you received this letter in error, please contact <Environmental Health Specialist>, or <Environmental Health Supervisor or Manager> at <PHONE NUMBER>. Your cooperation and timely response is appreciated and we welcome the opportunity to work with you on this matter.

Sincerely,

<EH MANAGER>

Appendix B2

<DATE>

NOTICE OF ALLEGED VIOLATION
AND
NOTICE OF CIVIL SUMMONS TICKET

<Name>
<Address>

CERTIFIED MAIL

RE: Operation and Maintenance Report
Alternative Onsite Sewage Systems (AOSS) pursuant to Virginia Code § 32.1-164.H; Uniform Schedule of Civil Penalties pursuant to Va. Code §32.1-164.J
HDID# <INSERT HD ID>

Dear <Owner Name>:

This Notice is to inform you <NAME> County Health Department has not received an AOSS inspection report for 201(X). As a result, you may be in violation of Virginia Code § 32.1-164 (J) and 12 VAC5-613-190 of the Alternative Onsite Sewage System (AOSS) Regulations. The AOSS Regulations (12VAC5-613; the Regulations) require owners to retain a licensed operator to conduct an annual inspection and submit a completed inspection report by the 15th of the month, following the month in which the inspection visit occurred. Depending on the results of that inspection, you may be required to complete additional maintenance and ensure your AOSS functions as designed and permitted.

VDH also established a uniform schedule of civil penalties (12VAC5-650; Schedule of Civil Penalties) to address violations of the Regulations. This Notice is to remind you of your responsibility as owner of an AOSS to operate the system according to the applicable statutes of the Code of Virginia and Regulations promulgated by VDH, including 12VAC5-613-140, 12VAC5-613-150, 12VAC5-613-180 and 12VAC5-613-190.

Therefore, I request that you retain a licensed operator to evaluate your system and file a report within 30 days of your receipt of this letter. You can review a list of licensed operators at: <http://www.vdh.virginia.gov/EnvironmentalHealth/Onsite/ServiceProviders/#AOSS>.

If you do not submit a report within 30 days, a Civil Summons Ticket will be issued in accordance with Virginia Code § 32.1-164(J) and 12VAC5-650. In order to avoid civil enforcement action, including an initial \$<FIRST OFFENSE FEE> Civil Penalty Fee and \$<SECOND OFFENSE FEE> for each additional Civil Summons Ticket issued every 10 days after issuance of the initial Civil Summons Ticket where the violation remains uncorrected, please submit your AOSS report to the <LOCALITY>Health Department, <PHONE NUMBER>, <ADDRESS>.

<Property Owner Name>

<DATE>

Page Two

If you are having trouble finding a licensed operator to submit the report, please contact me as soon as possible to discuss. If you have additional facts that you believe bear on this Notice and wish to schedule an Informal Fact-Finding Conference (IFFC) pursuant to Virginia Code § 2.2-4019, please contact me at <PHONE NUMBER>, <EMAIL>, <ADDRESS>. If your AOSS has been inspected, or if you believe you received this Notice in error, let me know as soon as possible. Thank you for your cooperation and timely response.

Sincerely,

<EHS>

<Title>

Virginia Department of Health
Sewage Handling and Disposal
CIVIL SUMMONS TICKET
Virginia Code § 32.1-164(J)

Property Address:

Date and Time Violation Observed:

Description of Violation:

Code Sections:

Virginia Code § 32.1-164(J)
12 Va. Admin. Code 5-650-____
12 Va. Admin. Code 5-6__-____

1st Penalty __ 2nd/More Penalty ____

Penalty Assessed: _____

IF THE VIOLATION IS NOT CORRECTED BY _____ AN ADDITIONAL MONETARY PENALTY MAY BE ASSESSED.

Corrective measures that must be taken to remedy the situation and avoid issuance of additional tickets:

Certification of Issuing VDH Employee

The undersigned states that he or she is an employee of the Virginia Department of Health, that he or she personally observed or investigated the commission of the violation noted above and/or the violation was based upon a signed affidavit or other reliable evidence, and that on the date of notice a copy of this notice and ticket was

Hand delivered to: _____

Mailed/Posted a true copy of this notices to the last known home or business address of the respondent or the respondent's agent.

Name of Person

Address of Service

City/State/Zip

Posted true copy of this notice at the site of the alleged violation.

YOU ARE REQUIRED TO RESPOND TO THIS NOTICE WITHIN 30 DAYS IN ONE OF THE FOLLOWING WAYS. HOWEVER, ADDITIONAL NOTICES OF VIOLATION AND CIVIL SUMMONS TICKETS MAY BE ISSUED WITHIN THAT TIME PERIOD IF WARRANTED. FAILURE TO RESPOND TO THIS NOTICE WILL RESULT IN THE FILING OF A CIVIL LAW SUIT TO ENFORCE THE PENALTY IMPOSED HEREIN.

1. TO PAY PENALTY & WAIVE YOUR RIGHT TO HEARING:

- i. Check the "Admit Violation" or "No Contest" box below;
ii. Make a personal check, cashier's check, certified check or money order payable to Virginia Department of Health. Do not send cash through the mail. Print violation notice number on the check or money order. Payment may be made in person at the _____ Health Department, located at _____, between the hours of 8:00 a.m. to _____, Monday through Friday, phone _____.

Please be advised that you may continue to receive Notices of Alleged Violation and Civil Summons Tickets, even if you pay the penalty fee, until the alleged violation is corrected.

2. TO REQUEST A COURT HEARING:

- i. Check the "Contest in Court" box and;
ii. Appear in person with the completed notice at, or mail this completed notice to, the _____ Health Department, located at _____, between the hours of 8:___ a.m. to ___:___ p.m., Monday through Friday, phone _____.

YOU MUST COMPLETE AND SIGN THIS CERTIFICATION CHOOSE ONE:

- Admit Violation and Pay Fee
No Contest and Pay Fee
Contest in Court.

Name: _____
Street
Address: _____
City: _____
State: _____
Zip: _____
Telephone
Number: _____

If you wish to contest this violation, a date will be set for trial in the General District Court of _____ and you will be notified of the date. Failure to appear in court on the date set for trial will result in the entry of default judgment against you, unless prior approval of your failure to appear has been granted by a judge of that court.

If you have chosen to admit the violation or plead no contest, complete the below statement with your signature and date, and include the required payment.

I hereby certify under penalty of law that I have answered as indicated above.

Signature: _____
Date: _____

FOR FURTHER INFORMATION, Contact _____ Health Department, located at

PHONE, (____) _____ Hours :_ AM to _: PM.

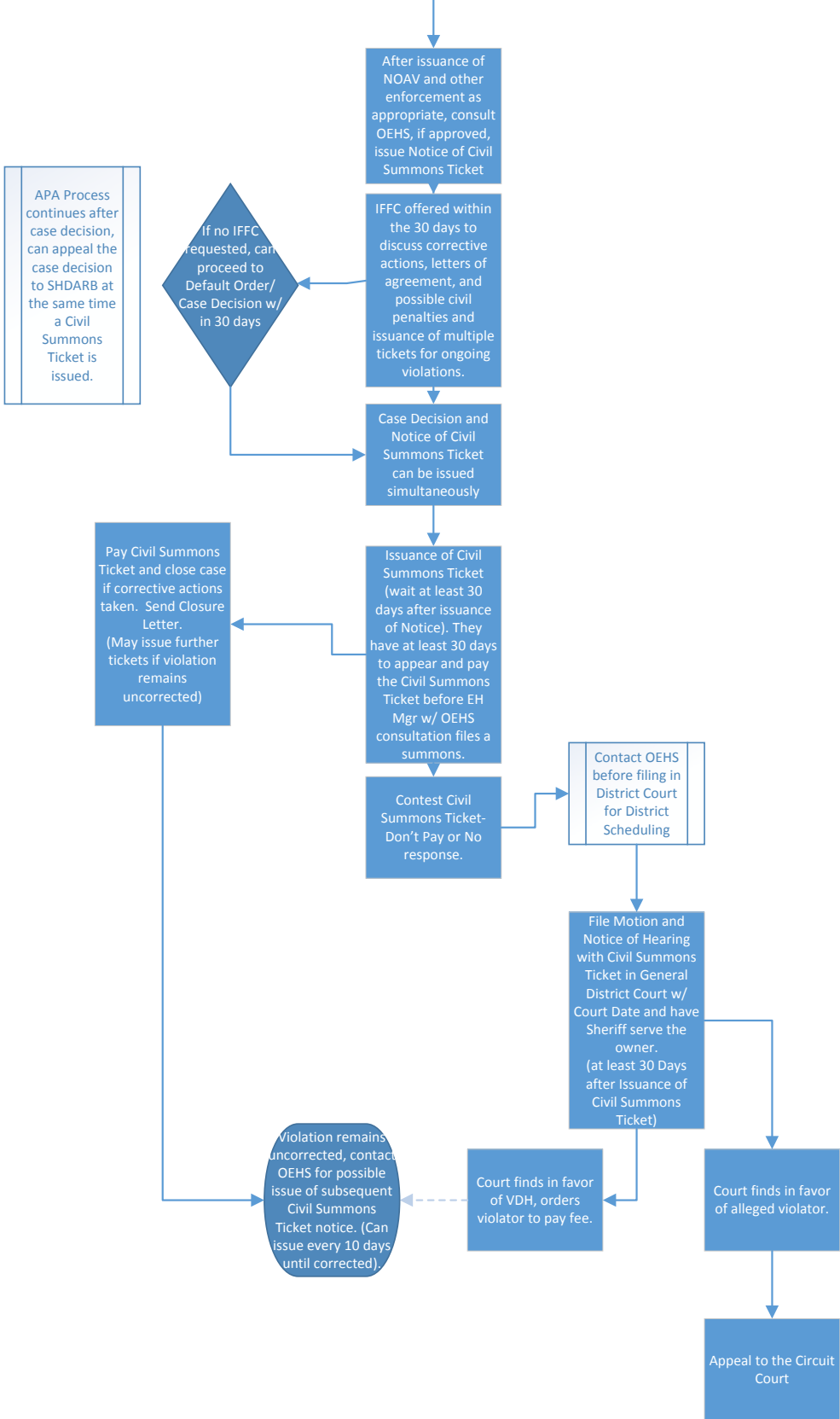
Virginia Department of Health Civil Summons Ticket

What do I do if I have received a Civil Penalty Ticket for a violation of the Virginia Department of Health's Regulations?

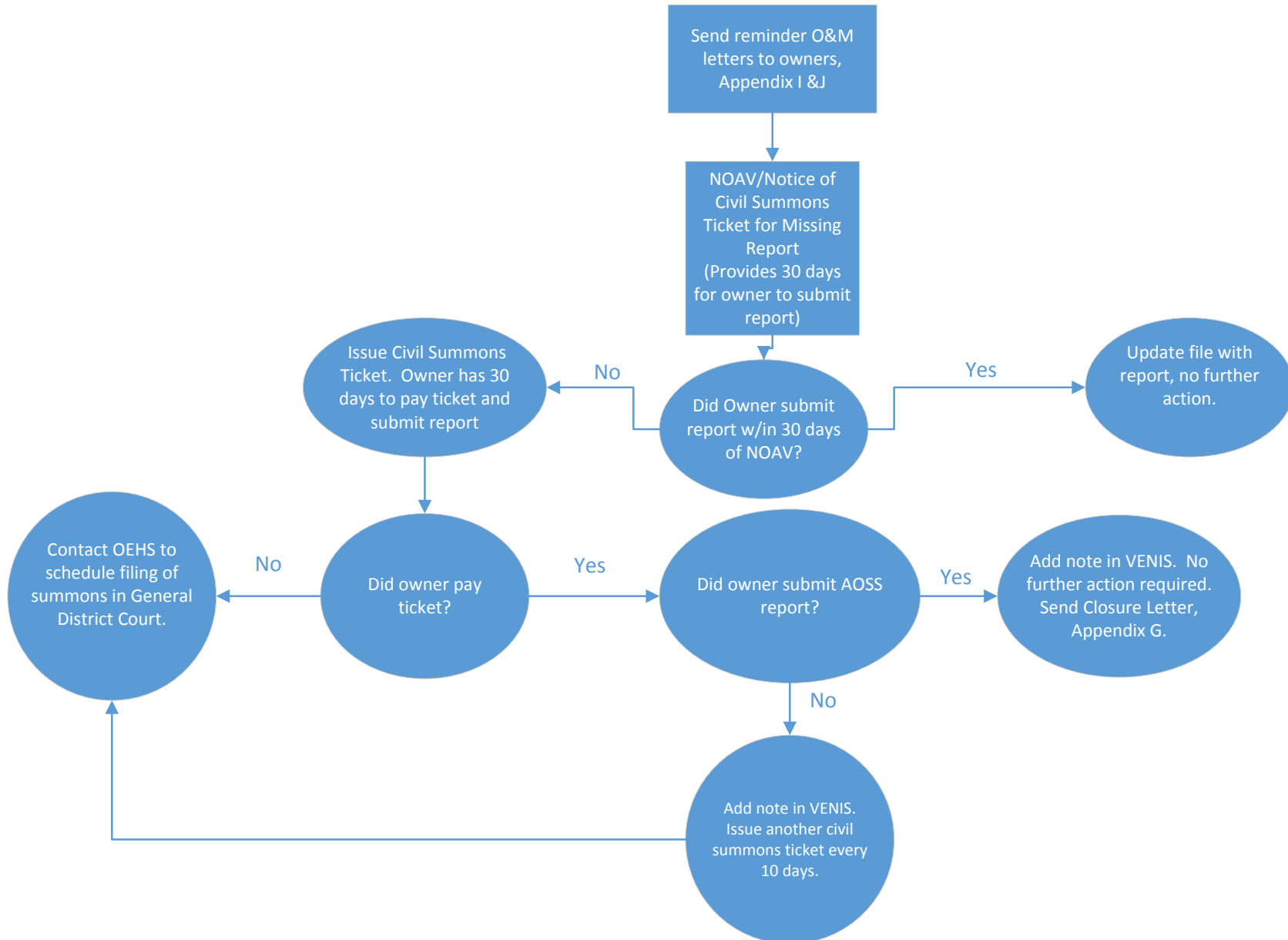
If you have received a Civil Penalty Ticket for violation(s) of the provisions of the Sewage Handling and Disposal Regulations, the Alternative Onsite Sewage Regulations, or the Discharging Regulations, you may choose to respond in any of the following ways:

1. **Admit Violation**= Admission of guilt.
 - Check the "Admit Violation and Pay Fee" box on the right hand side of the ticket.
 - Complete the required information and sign the ticket.
 - Return the signed copy and the indicated penalty fee to the Virginia Department of Health. This will indicate your intent to correct the violation.
 - Correct the violation. If the violation remains uncorrected, additional Civil Summons Tickets with additional fees will be issued.
2. **No Contest**= No admission of guilt; however you will correct the sited violation.
 - Check the "No Contest and Pay Fee" box on the right hand side of the ticket.
 - Complete the required information and sign the ticket.
 - Return the signed copy and the indicated penalty fee to the Virginia Department of Health. This will indicate your intent to correct the violation.
 - Correct the violation. If the violation remains uncorrected, additional Civil Summons Tickets with additional fees will be issued.
3. **Contest in Court**= No admission of guilt. You are contesting the issuance of the Civil Summons Ticket before the General District Court of your jurisdiction.
 - Check the "Contest in Court" box on the right hand side of the ticket.
 - Complete the required information and sign the ticket. (This is not an admission of guilt).
 - Return the signed form to the Virginia Department of Health.
 - At your request to appear in Court, the Virginia Department of Health, in consultation with the Office of the Attorney General, will file a summons in the General District Court and obtain a return date to appear before the Court and have the case heard. You will be served with the summons indicating the return court date.

Appendix D1 Administrative Process for Civil Summons Ticket Not Related to O & M



Appendix D2
Administrative Process for Missing O & M
Report, Civil Penalty Only



MOTION AND NOTICE OF HEARING

Commonwealth of Virginia

[] General District Court

[] Juvenile & Domestic Relations District Court

.....
CITY OR COUNTY

.....
STREET ADDRESS OF COURT

I, the undersigned, respectfully move this Court to take the following action(s) in the case named at right

.....
for the following reasons:

.....
DATE

.....
APPLICANT'S TITLE

.....
APPLICANT'S SIGNATURE

NOTICE OF HEARING

TO:
RESPONDENT

A hearing will be held in this Court on on this motion.
HEARING DATE AND TIME

.....
DATE

[] CLERK

[] DEPUTY CLERK

It is hereby ORDERED that the motion is [] granted [] denied [] dismissed.

.....
DATE

.....
JUDGE

HEARING DATE

CASE NO.

**MOTION AND
NOTICE OF HEARING**

[] Commonwealth of Virginia

[]

v./In re

DATE OF ORIGINAL JUDGMENT OR FINAL HEARING

Service on Respondent type required:

[] Personal Service Only

[] Personal or Substituted Service Only

[] Mailed on
DATE

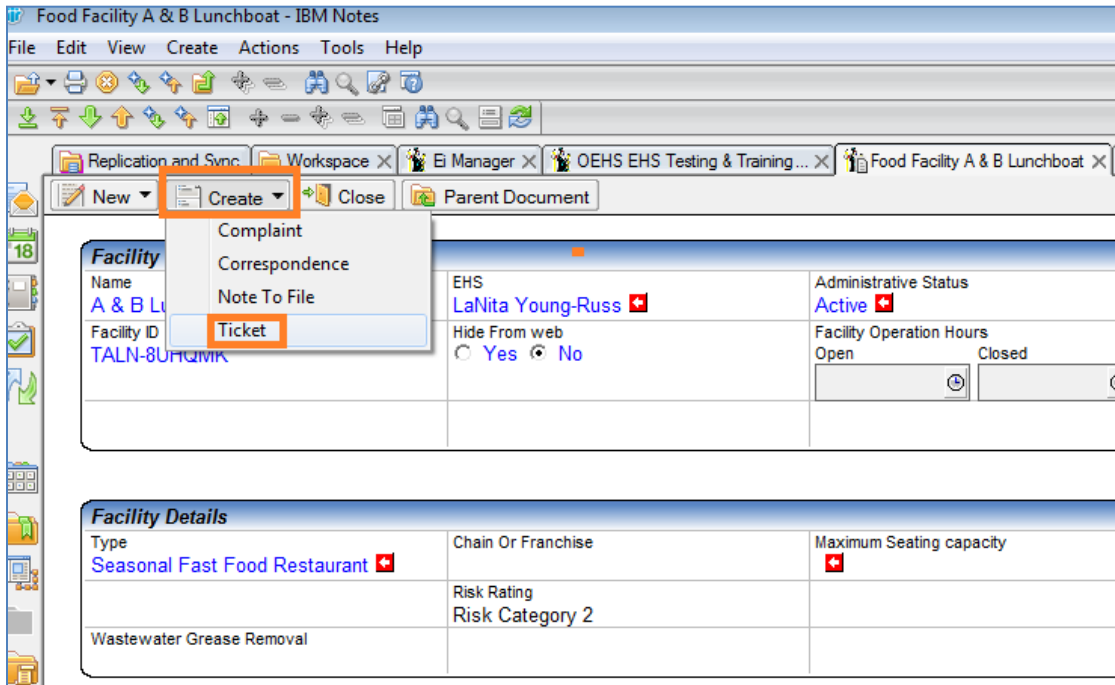
RETURNS: Each defendant was served according to law, as indicated below, unless not found.

NAME	
ADDRESS	
.....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No.
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth.	
<input type="checkbox"/> Not found	_____
SERVING OFFICER	
..... for _____	
DATE	

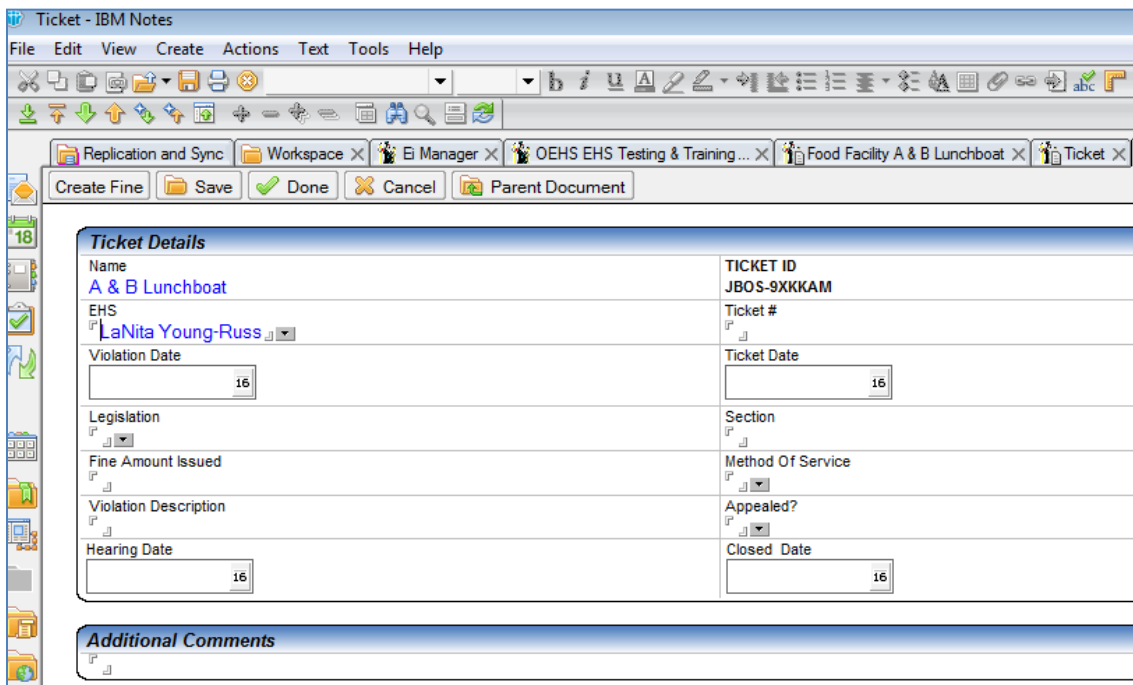
NAME	
ADDRESS	
.....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No.
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth.	
<input type="checkbox"/> Not found	_____
SERVING OFFICER	
..... for _____	
DATE	

Creating a Civil Summons Ticket in VENIS

From the facility page, go to “create” “ticket”



Enter/edit details



Save the document.

The screenshot shows a software window with multiple tabs: 'Replication and Sync', 'Workspace', 'Ei Manager', 'OEHS EHS Testing & Training...', 'Food Facility A & B Lunchboat', and 'Ticket'. The 'Ticket' tab is active, displaying a 'Ticket Details' form. The form fields include:

- Name: A & B Lunchboat
- TICKET ID: JBOS-9XKKAM
- EHS: LaNita Young-Russ
- Ticket #:
- Violation Date: 17-Jun-2015
- Ticket Date: 17-Jun-2015
- Legislation: Sewage Disposal Regulations
- Section: 12VAC5-613-140. Owner responsibilities.
- Fine Amount issued: 150.00
- Method Of Service: In person to violator
- Violation Description: Failure to submit annual operation and maintenance reports
- Appealed?:
- Hearing Date:
- Closed Date:

Below the form is an 'Additional Comments' section. An 'IBM Notes' dialog box is overlaid on the screen, containing the text 'Do you want to save this new document?' and three buttons: 'Yes', 'No', and 'Cancel'.

The Civil Summons Ticket is saved as a child document of the facility.

Common Name	City	Building #	Director	Street Name
▶ 1 Alta Lane	Richmond	1233		Main St
▶ 11Test Location	Richmond	1234		Blackberry Rd
▶ 12-A-1	Lynchburg	113		Alta Lane
123				123 rd
3Guys Pizza Pies	Midlothian	7016		Woodlake Comr
▶ 82-A-91	Stanley	2073		Balkamore Roa
▶ A Child's Place Day Care	Midlothian	1211		Walton Bluff Pkw
▶ A N. Y. Slice	Midlothian	133		Brown's Way Ro
▼ A & B Lunchboat	Henrico	2627		New Market Roa
▼ Food Facility: "A & B Lunchboat", LaNita Young-Russ, Seasonal Fast Food Restaurant - Seasonal F 1-Jan-2015				
Ticket on 17-Jun-2015 by LaNita Young-Russ				
Inspection Routine on 3-Dec-2014, by LaNita Young-Russ				
Assessment performed by LaNita Young-Russ on 14-Nov-2014 - Risk Rating: Risk Category 1				
Assessment performed by LaNita Young-Russ on 10-Nov-2014 Score:0				
Assessment performed by LaNita Young-Russ on 23-Oct-2014 Score:				
Assessment performed by LaNita Young-Russ on 23-Oct-2014 Score:				
Inspection Critical Procedures on 23-Oct-2014, by LaNita Young-Russ				
▶ Airport Inn	Richmond	5121		South Laburnum

Create the "fine" by typing amount into the correct field.

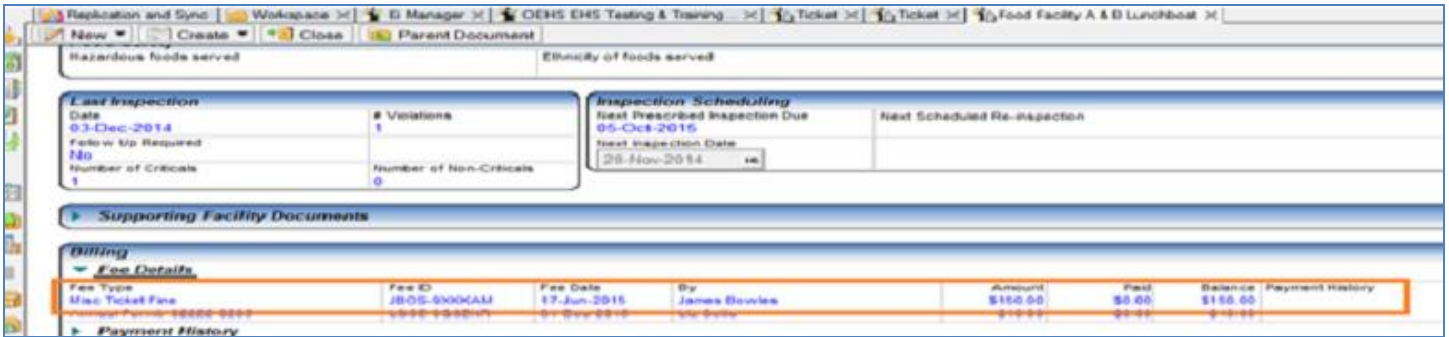
Ticket Details	
Name A & B Lunchboat	TICKET ID JBOS-9XKKAM
EHS LaNita Young-Russ	Ticket # []
Violation Date [16]	Ticket Date [16]
Legislation []	Section []
Fine Amount Issued []	Method Of Service []
Violation Description []	Appealed? []
Hearing Date [16]	Closed Date [16]

Additional Comments
[]

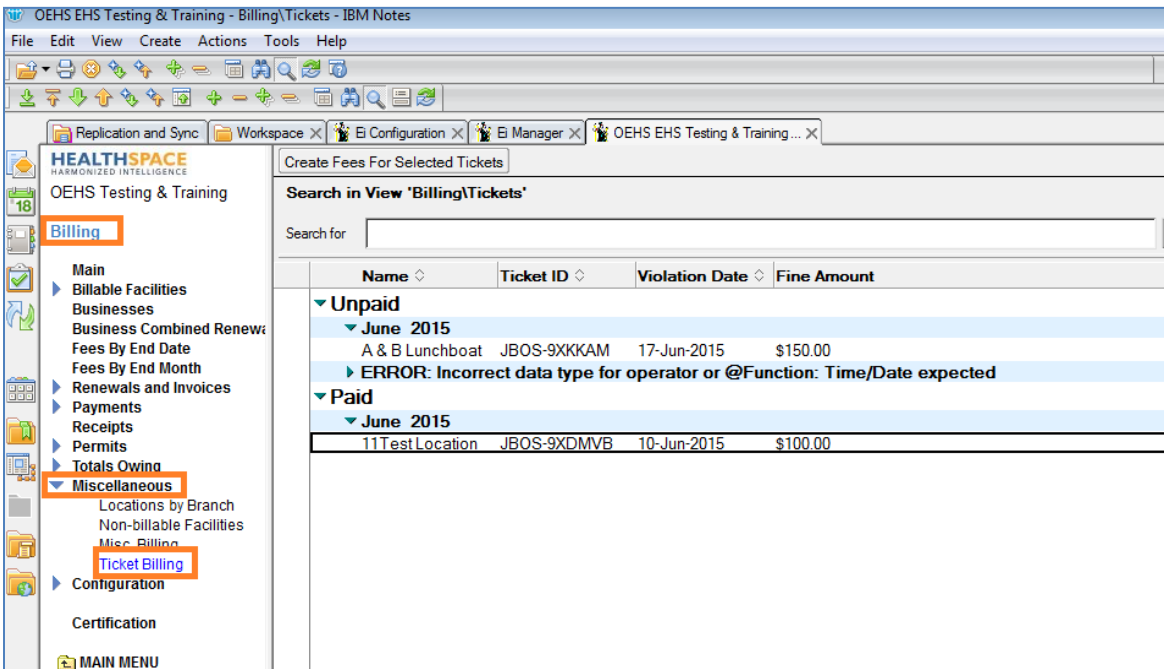
Click on "show billing document" to see the bill in the billing section of the facility document.

Ticket Details	
Name A & B Lunchboat	TICKET ID JBOS-9XKKAM
EHS LaNita Young-Russ	Ticket # []
Violation Date 17-Jun-2015 [16]	Ticket Date 17-Jun-2015 [16]
Legislation Sewage Disposal Regulations	Section 12VAC5-613-140. Owner responsibilities.
Fine Amount Issued \$150.00	Method Of Service In person to violator
Violation Description Failure to submit annual operation and maintenance reports	Appealed? []
Hearing Date [16]	Closed Date [16]

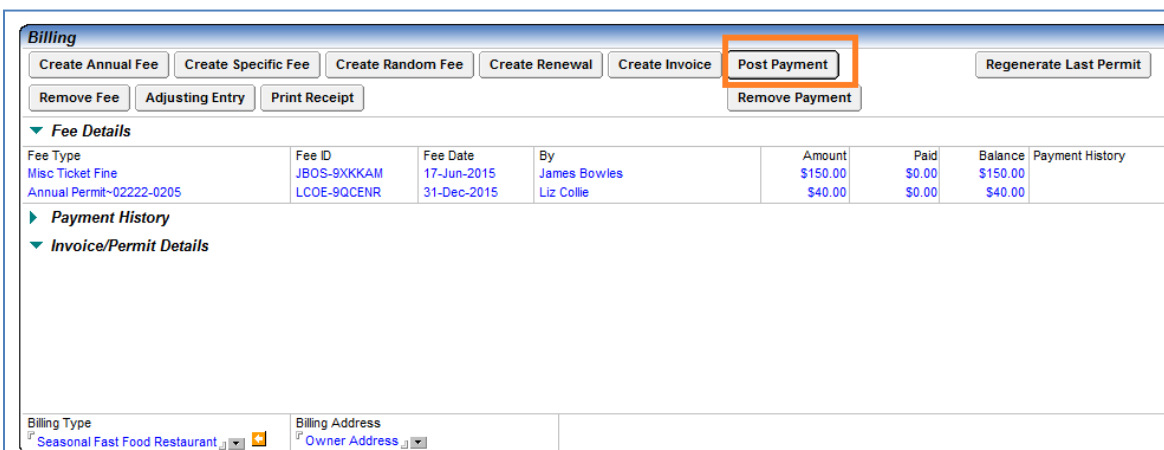
Additional Comments
[]



The paid and unpaid fines can also be accessed from the Billing module under miscellaneous billing.



Payments are posted as any other miscellaneous payment. Go to the facility, click on “post payment”



Enter the appropriate details and click "ok".

Food Safety
 Hazardous foods served: [dropdown] Ethnicity of foods served: [dropdown]

Last Inspection
 Date: 03-Dec-2014 # Violations: 1
 Follow Up Required: No
 Number of Criticals: 1 Number: 0
 Inspection Frequency: Every 6 months

Supporting Facility Documents

Billing
 Create Annual Fee | Create Specific Fee | Create Random Fee | Create Renewal | Create Invoice | Post Payment | Regenerate Last Permit
 Remove Fee | Adjusting Entry | Print Receipt | Remove Payment

Payment Information
 Payment amount will be applied to the oldest selected fees first
 Outstanding Fees:
 JBOS-9XKKAM 17-Jun-2015 Misc Ticket Fine \$150.00
 LCOE-9QCENR 31-Dec-2015 Annual Permit-02222-0205 \$40.00
 Date: 19-Jun-2015 Amount: \$150.00 ID: JBOS-9XMJT4
 Payment Type: Cash Check # / Details (30 character max): [input]
 OK Cancel

Fee Details

Fee Type	Fee ID	Fee Date	By	Amount	Paid	Balance	Payment History
Misc Ticket Fine	JBOS-9XKKAM	17-Jun-2015	James Bowles	\$150.00	\$0.00	\$150.00	
Annual Permit-02222-0205	LCOE-9QCENR	31-Dec-2015	Liz Collie	\$40.00	\$0.00	\$40.00	

Payment History
Invoice/Permit Details

A printable receipt is generated.

Replication and Sync | Workspace X | Ei Configuration X | Ei Manager X | OEHS EHS Testing & Training... X | Ticket X

Print | Create PDF email | Close | Parent Document

Office of Environmental Health Services
 1500 East Main Street, Room 115
 Richmond, Virginia 23219
 Phone: (804) 786-1750
 Fax: (804) 225-4003

Receipt
 JBOS-9XMJVK

Payment ID: JBOS-9XMJVF | Payment Date: 19-Jun-2015

Establishment
 A & B Lunchboat
 2627 New Market Road
 Henrico VA 23231

Legal Business

Payment Date	Payment Type	Payment ID	Payment Details	Payment Amount
19-Jun-2015	Cash	JBOS-9XMJVF	[none]	\$150.00

Fee Date	Fee Type	Fee ID	Fee Amount	Amount Paid	Balance
17-Jun-2015	Misc Ticket Fine	JBOS-9XKKAM	\$150.00	\$150.00	\$0.00

The payment is recorded in the payment history of the facility.

Billing
 Create Annual Fee | Create Specific Fee | Create Random Fee | Create Renewal | Create Invoice | Post Payment | Regenerate Last Permit
 Remove Fee | Adjusting Entry | Print Receipt | Remove Payment

Fee Details

Fee Type	Fee ID	Fee Date	By	Amount	Paid	Balance	Payment History
Misc Ticket Fine	JBOS-9XKKAM	17-Jun-2015	James Bowles	\$150.00	\$150.00	\$0.00	JBOS-9XMJVF \$150
Annual Permit-02222-0205	LCOE-9QCENR	31-Dec-2015	Liz Collie	\$40.00	\$40.00	\$0.00	JBOS-9XMJW9 \$40

Payment History

Payment ID	Payment Date	Posted By	Payment Type	Check # / Details	Payment Amount
JBOS-9XMJW9	19-Jun-2015	James Bowles	Check	[none]	\$40.00
JBOS-9XMJVF	19-Jun-2015	James Bowles	Cash	[none]	\$150.00

Invoice/Permit Details
 Permit # JBOS-9XMJT2 for A & B Lunchboat. Expires 31-Dec-2015

Appendix G

NOAV & Civil Summons Ticket Closure Letter

[DATE]

[NAME]
[ADDRESS]

RE: Notice of case closure.
Notice of Alleged Violation <and Civil Summons Ticket> Received __ __, 20__
[INSERT PROPERTY IDENTIFIER]

Dear (Property owner):

This letter is to inform you that the [COUNTY] Health Department is no longer seeking enforcement pursuant to the <NOAV><and Civil Summons Ticket> you received on __ __, 20__ because <either the violation has been corrected> <and fee paid> <or the violation no longer exists>. <If violation has been corrected, detail the corrected actions taken here, including any fee paid. If the violation no longer exists, detail observations, notes or evidence demonstrating that it no longer exists.>

Thank you for your time and attention in resolving this matter. If you have additional questions about this letter, please contact [NAME], Environmental Health Manager, [COUNTY] Health Department at [ADDRESS, PHONE, EMAIL].

Sincerely,

[NAME]

<OfficeName>
<OfficeAddress>
<OfficeCity>, <OfficeProvince> <OfficePostalCode>
<OfficePhone> Voice
<OfficeFax> Fax

<Today>

<OwnerName>
<OwnerMailingAddress>
<OwnerMailingCity>, <OwnerMailingProvince> <OwnerMailingPostalCode>

Subject: **Letter of Agreement**

Health Department ID Number: <HDeptId>
Subdivision Name: <LegalDescriptionSubdivision>
Tax Map Number: <LegalDescriptionTaxID>
NOAV ID Number:

LETTER OF AGREEMENT

Dear <OwnerContactFirst> <?#OwnerContactLast?OwnerName?OwnerContactLast> :

This Letter of Agreement between <**Owner Name**> and the Virginia Department of Health, <**Local Health Department**> sets forth the actions to address alleged violations of <**Regulatory Sections**> of the Alternative Onsite Sewage System Regulations. By signing and dating the original letter, and returning it to this office by <**date**>, you agree to the terms of this Letter of Agreement. Please keep a copy of the signed letter for your records.

Background

Described below are the events leading to this Letter of Agreement:

[Very briefly describe the observations, legal requirements, and the dates of any inspections and NOAVs or other enforcement measures.]

Agreed Actions

Accordingly, <**Owner Name**> and VDH, <**Local Health Department**>, agree that <**Owner Name**> shall:

1. By <**date**>, complete <***agreed to actions**> in accordance with <**regulatory requirement**>.

[*Use numbered paragraphs to describe each action the owner agrees to take and provide a definite date for completion of each.]

VDH expects that all of these items will be completed according to the schedule set forth in this agreement. VDH may take other enforcement action in the event <Owner Name> does not act in accordance with this agreement, or new information or circumstances suggest that other measures are required to ensure compliance with Virginia statutes and regulations or to protect public health and the environment. If <Owner Name> determines that it will not be able to complete the above actions by the agreed date(s), <Owner Name> shall immediately notify VDH. This Letter of Agreement becomes effective only upon your signing, dating, and returning the original letter by the date specified. This Letter of Agreement terminates automatically 12 months after you sign the original letter.

This Letter of Agreement is neither a case decision nor a fact finding under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.*

Thank you for your cooperation. Please return the signed and dated original to <Local Health Department> by the date noted above. You can address any questions you have about this Letter of Agreement to <EH Manager> at <(xxx) xxx-xxxx> or at [\[Contact.Name\]@vdh.virginia.gov](mailto:[Contact.Name]@vdh.virginia.gov).

Sincerely,

<EH Manager>

cc: Case File

Seen and agreed by <Owner Name>:

Date

Name

Title

<OfficeName>
<OfficeAddress>
<OfficeCity>, <OfficeProvince> <OfficePostalCode>
<OfficePhone> Voice
<OfficeFax> Fax

<Today>

<OwnerName>
<OwnerMailingAddress>
<OwnerMailingCity>, <OwnerMailingProvince> <OwnerMailingPostalCode>

Subject: Alternative Onsite Sewage Disposal System Operation and Maintenance Reports
Health Department ID Number: <HDeptId>
Subdivision Name: <LegalDescriptionSubdivision>
Tax Map Number: <LegalDescriptionTaxID>

Dear <OwnerContactFirst> <?#OwnerContactLast?OwnerName?OwnerContactLast> :

Our records indicate that you have an operation permit <Operation Permit Number and Issued Date> for an alternative onsite sewage system (AOSS) that serves your property located at **<FacilityLocationAddress> <PhysicalCity>, <PhysicalProvince> <PhysicalPostalCode>**. As an AOSS owner, you are required by Virginia Code §32.1-164H, to have an operator submit an operator report for your system (most AOSS require at least one report to be submitted annually; for further detail see Attachment: Table 4). This report is necessary to determine whether your AOSS is working properly and is not negatively impacting public health or groundwater. Please ensure that an operator submits the required report(s) for your AOSS in accordance with the timeframe detailed in the Attachment, Table 4.

The AOSS Regulations, at 12 VAC5-613-120, require you to have your AOSS operated and maintained by a licensed operator.¹ Whenever an operator performs a required visit the results are to be documented by the operator filing a report using the web-based system in accordance

¹ Operation and maintenance information for your system may be found by contacting the system designer. If you do not have a copy of your O&M Manual or do not know who your designer is, then please contact us at **<OfficeName> <OfficeAddress> <OfficeCity>, <OfficeProvince> <OfficePostalCode> or by phone at <OfficePhone>**. A list of licensed operators can be obtained by visiting the Department of Professional and Occupational Regulation at www.dpor.virginia.gov. Select "License Lookup" from the menu, type an asterisk (*) in the name field, check the "Operators" box under "Onsite Sewage Systems Professionals" and click "search." You can also find operators at www.vdh.virginia.gov/EnvironmentalHealth/Onsite/aossoperatorlist.htm.

with §32.1-164H of the *Code of Virginia*. Please be advised the *AOSS Regulations* at 12VAC5-613-50.C provide that a “failure by any owner to accomplish any mandated visit, operation, maintenance, repair, monitoring, sampling, reporting, or inspection requirement prescribed by this chapter shall be a violation.”

We look forward to working with you in maintaining your AOSS to ensure the protection of public health and the environment. If you have any questions regarding this letter or the operation of your AOSS, please feel free to contact me directly at <EH Manager Contact Information>.

Sincerely,

<EHO>, <EHOPosition>

Attachment: Table 4 *Minimum Operator Visit Frequency for AOSSs up to 40,000 GPD*

12VAC5-613-150. Operator requirements for AOSS with flows up to 40,000 GPD, minimum frequency of visits.

The owner of each AOSS shall have that AOSS visited by an operator in accordance with Table 4.

Table 4 Minimum Operator Visit Frequency for AOSSs up to 40,000 GPD

Avg. Daily Flow	Initial Visit	Regular visits following initial visit
≤ 1,000 GPD	Within 180 calendar days of the issuance of the operation permit	Every 12 months
> 1,000 GPD to 10,000 GPD	First week of actual operation	Quarterly
>10,000 GPD to 40,000 GPD	First week of actual operation	Monthly

<OfficeName>
<OfficeAddress>
<OfficeCity>, <OfficeProvince> <OfficePostalCode>
<OfficePhone> Voice
<OfficeFax> Fax

<Today>

<OwnerName>
<OwnerMailingAddress>
<OwnerMailingCity>, <OwnerMailingProvince> <OwnerMailingPostalCode>

Subject: Alternative Onsite Sewage Disposal System
Health Department ID Number: <HDeptId>
Subdivision Name: <LegalDescriptionSubdivision>
Tax Map Number: <LegalDescriptionTaxID>

Dear <OwnerContactFirst> <?#OwnerContactLast?OwnerName?OwnerContactLast> :

Our records indicate that an operator report for the alternative onsite sewage system (AOSS) located at <FacilityLocationAddress> <PhysicalCity>, <PhysicalProvince> <PhysicalPostalCode>, has not been submitted as required by Virginia Code §32.1-164H. The operation permit for this AOSS was issued to you on <OperationPermitIssuedDate>. This report is necessary to determine whether your AOSS is working properly and is not negatively impacting public health or groundwater. Please ensure that an operator submits the required report(s) for your AOSS (most AOSS require at least one report to be submitted annually; see Attachment: *Table 4*).

Previously, our office sent you notice of the Alternative Onsite Sewage System Regulations and your responsibilities as an owner of an AOSS, including the need, pursuant to 12 VAC5-613-120, to have your AOSS operated and maintained by a licensed operator.¹ Whenever an operator

¹ Operation and maintenance information for your system may be found by contacting the system designer. If you do not have a copy of your O&M Manual or do not know who your designer is, then please contact us at <OfficeName> <OfficeAddress> <OfficeCity>, <OfficeProvince> <OfficePostalCode> or by phone at <OfficePhone>. A list of licensed operators can be obtained by visiting the Department of Professional and Occupational Regulation at www.dpor.virginia.gov. Select "License Lookup" from the menu, type an asterisk (*) in the name field, check the "Operators" box under "Onsite Sewage Systems Professionals" and click "search." You can also find operators at www.vdh.virginia.gov/EnvironmentalHealth/Onsite/aossoperatorlist.htm.

performs a required visit the results are to be documented by the operator filing a report using the web-based system in accordance with §32.1-164H of the *Code of Virginia*.

Please be advised the *AOSS Regulations* at 12VAC5-613-50.C provide that a “failure by any owner to accomplish any mandated visit, operation, maintenance, repair, monitoring, sampling, reporting, or inspection requirement prescribed by this chapter shall be a violation.” We very much want to avoid enforcement action and ask for your immediate cooperation in filing the operator report. If we do not receive your operator report within 30 days, we will issue you a Notice of Alleged Violation and a Notice of Civil Summons Ticket. Please have your operator submit the report for your AOSS at your earliest convenience to avoid any Civil Summons Ticket penalty fees as detailed in 12 VAC5-650.

If you have any question regarding this letter or believe that you received this letter in error, please contact me immediately. Thank you for your anticipated actions to ensure your AOSS is functioning properly and fully complies with the regulations that protect public health and groundwater.

Sincerely,

<EHO>, <EHOPosition>

Attachment: Table 4 *Minimum Operator Visit Frequency for AOSSs up to 40,000 GPD*

12VAC5-613-150. Operator requirements for AOSS with flows up to 40,000 GPD, minimum frequency of visits.

The owner of each AOSS shall have that AOSS visited by an operator in accordance with Table 4.

Table 4 Minimum Operator Visit Frequency for AOSSs up to 40,000 GPD

Avg. Daily Flow	Initial Visit	Regular visits following initial visit
≤ 1,000 GPD	Within 180 calendar days of the issuance of the operation permit	Every 12 months
> 1,000 GPD to 10,000 GPD	First week of actual operation	Quarterly
>10,000 GPD to 40,000 GPD	First week of actual operation	Monthly

HB 2477 Implementation Plan

- 1. Require, in cases in which site evaluations and design services for onsite sewage systems and private wells are provided by private sector service providers, that such site evaluation and design service providers disclose to the property owner when a conventional onsite sewage system is an option;***

As part of the revisions to GMP 2015-01, modify the certification statement for OSE and PE evaluations and designs to verify that the OSE or PE discussed COSS design options, if available, with the property owner when an AOSS is proposed.

Proposed Completion Date: no later than July 1, 2017

Project Manager: Dave Tiller.

Process:

- Draft a revised OSE/PE cover page with the revised certification statement by March 15, 2017.
 - Share the draft revised cover page with EH Managers and SHADAC for feedback.
 - Discuss the revised cover page at the next EH Managers meeting and the next SHADAC meeting on April 14, 2017.
 - Make revisions and provide the revised form for management review by April 26, 2017.
 - Publish the revised form no later than July 1, 2017.

- 2. Revise agency regulations and policies to require Department staff to inspect all onsite sewage systems and private wells designed by private sector service providers;***

As part of the revisions to GMP 2015-01, include requirement that LHD staff begin inspecting all onsite sewage systems and private well installations no later than July 1, 2018.

Proposed completion date: revise policy no later than July 1, 2017, with complete implementation by July 1, 2018.

Project Manager: Dave Tiller

Process:

- Draft revisions to GMP 2015-01 by March 15, 2017.
 - Share the draft revisions with EH Managers and SHADAC for feedback.
 - Discuss the revisions at the next EH Managers meeting and the next SHADAC meeting on April 14, 2017.
 - Make revisions and provide the revised policy for management review by April 26, 2017.
 - Publish the revised policy no later than July 1, 2017.

- f. Establish a small workgroup consisting of LHD staff, OSEs, PEs, septic installers, and well drillers to establish a process for inspection notifications and establish expectations for VDH staff and private sector designers regarding final inspections (i.e. what is VDH's role, what is the private sectors role). Workgroup to complete development of the process and submit for management review by July 28, 2017. Workgroup to provide updates to EH Managers and SHADAC throughout the process for feedback. (Todd Grubbs and Jay Conta will work together with the workgroup; Todd from the policy aspect and Jay from the process standardization aspect)
 - g. Publish the inspection process as an addendum to revised GMP 2015-01 by August 31, 2017.
 - h. Recommend LHD being implementation of inspection process to gradually increase percent of private sector design inspection to 100% by July 1, 2018.
- 3. *Expand efforts to educate the public concerning the design, operation, and maintenance of onsite sewage systems and private wells;***

Implement the attached Onsite Sewage and Private Well Education and Outreach Program.

Proposed completion date: Ongoing, but with at least three key educational outreach efforts in place by October 2, 2017.

Project Manager: Lance Gregory

Process: See attached

- 4. *Expand efforts to incorporate onsite sewage systems and private well data into community health assessments;***

Onsite Division staff will work with new Data Division to establish an internal workgroup (OEHS, ODW, LHD directors and staff, Health Equity) to evaluate potential options for incorporating onsite and well data into community health assessments, and to establish pilot projects.

Proposed completion date: Ongoing.

Project Manager: Lance Gregory

Process: TBD

- 5. *Enhance quality assurance checks and inspection procedures for the review of evaluations, designs, and installations by private sector service providers and update its quality assurance manual to reflect this change in the agency's business model;***

Update the Onsite QA manual to reflect revisions to GMP 2015-01.

Proposed completion date: August 31, 2017

Project Manager: Lance Gregory

Process: Incorporate revisions to GMP 2015-01 and the inspection process addendum into the Onsite QA manual. Revisions will be submitted for management review at the same time as the inspection process addendum.

- 6. Consider separating work unit functions regarding permitting and enforcement for onsite sewage systems and private wells to ensure that staff reviewing evaluations and designs for permitting purposes are separate and independent from staff performing enforcement functions;**

Establish a small workgroup consisting of OEHS and LHD staff to consider process for separating work unit functions.

Proposed completion date: August 31, 2017

Project Manager: Karri Atwood

Process:

- a. Establish a workgroup. Workgroup to provide updates to EH Managers and the SHADAC throughout the process.
 - b. The goal of the workgroup is to provide a report and decision memo to the Commissioner on this issue by August 31, 2017.
 - c. OCOM to make decision on workgroup recommendations by September 28, 2017.
- 7. Improve the collection and management of data about onsite sewage systems and private wells, including (i) creating a web-based reporting system for conventional onsite sewage system operation and maintenance, (ii) accepting applications and payments online, (iii) making onsite sewage system and private well records available online, (iv) creating a complete electronic record of all permitted onsite sewage systems and private wells in the Commonwealth, and (v) creating procedures for tracking Notices of Alleged Violations and corrective actions; and**

Onsite Division staff to discuss with new Data Division Manager to determine: 1) which components can be accomplished in VENIS today; 2) which components will require development. A detailed project plan will be developed following that meeting.

- 8. Revise agency policies to allow the transfer of valid construction permits for onsite sewage systems and private wells to new property owners.**

As part of the revisions to GMP 2015-01, to allow the transfer of valid construction permits

Proposed completion date: revised policy no later than July 1, 2017

Project Manager: Dave Tiller

Process:

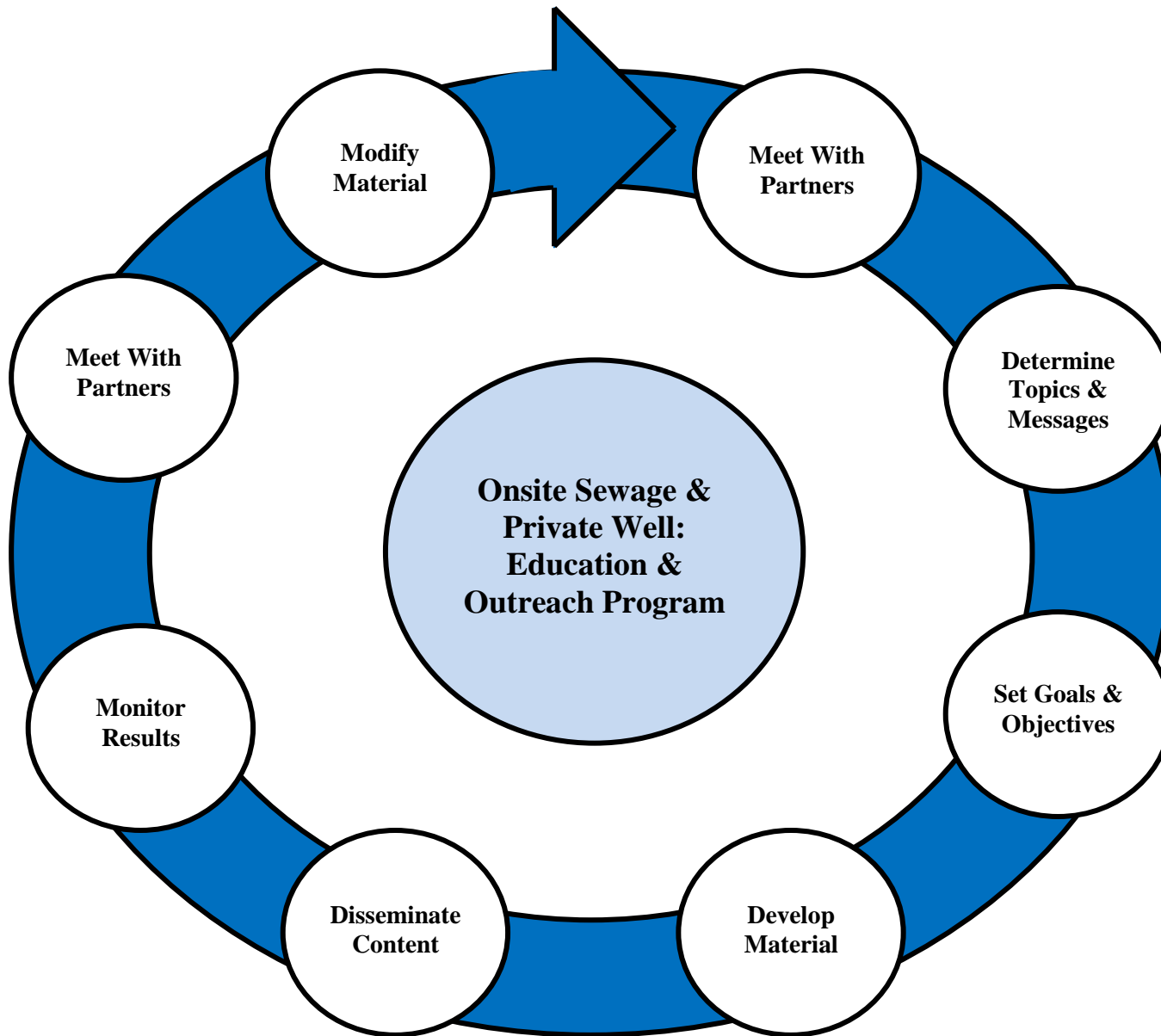
- a. Draft revisions to GMP 2015-01 by March 15, 2017.
- b. Share the draft revisions with EH Managers and SHADAC for feedback.
- c. Discuss the revisions at the next EH Managers meeting and the next SHADAC meeting on April 14, 2017.
- d. Make revisions and provide the revised policy for management review by April 26, 2017.
- e. Publish the revised policy no later than July 1, 2017.

2. That the Department of Health shall report on its progress in implementing the provisions of this act and any recommendations for statutory, regulatory, policy or budgetary changes that may be necessary to implement the provisions of this act to the Secretary of Health and Human Resources and the Chairmen of the House Committee on Health, Welfare and Institutions and Senate Committee on Education and Health by November 1, 2017.

Report will cover progress of the action listed above and a draft bill to implement the other recommendations from the HB 558 report.

Completion Date: No later than October 18, 2017.

Project Manager: Lance Gregory



I. Purpose

The purpose of the onsite sewage and private well education and outreach program is to provide citizens of the Commonwealth of Virginia with a basic understanding of onsite sewage and private well systems, with a focus on key messages that promote improvements to individual and community health.

II. Target Audience

The target audience is individuals using onsite sewage and/or private well systems.

III. Objectives and Goals

The objective is to change the out-of-site out-of-mind paradigm for onsite sewage and/or private well system users by increasing their basic understanding of how these systems function, and by having users understand that these systems have a direct impact on their health and the health of their community. The overall goal is healthier Virginians in healthier communities.

IV. Methods of Delivery

The program will be broken in to a multitude of small education and outreach programs; each with a unique message, objective, and goal. These small programs will be delivered using a series of methods.

1. **Social Media:** We will use social media platforms such as Twitter and Facebook to disseminate the overall message and direct interested citizens to view 2-3 minute YouTube videos to deliver the message through an educational component. YouTube viewers will see videos of onsite sewage and private well system simulators, as well as photos and real-world videos taken by VDH staff and industry partners. Likewise, similar messages and material posted by industry partners will be re-posted on VDH social media platforms.
2. **Website Content:** Messages and educational material (as well as links to social media outlets) specifically directed to the general public will be posted on a more user-friendly portion of the onsite sewage and water services website. Content will be available for publication on industry partner websites, and links to similar messages and material on industry partner websites will be added.
3. **Outreach-in-a-box:** Messages and educational material will be packaged for easy access and easy use by local health department staff and industry partners. Electronic materials will be posted in a dedicated location on the onsite sewage and

water services website. Materials and visuals, such as system simulators, will be made available to local health department staff upon request once staff have completed any necessary training (which will be provided by OEHS upon request). Local health departments will also be encouraged to share “outreach-in-a-box” projects which they have created. Projects will be peer reviewed to assure they are not locality or district specific, and to assure they align with the overall program purpose of promoting improvements to individual and community health.

V. Monitoring Effectiveness

Initial monitoring will focus on the number of citizen viewing online educational material and attending “outreach-in-a-box” events. However, staff will seek input from partners to develop more effective measures of each individual programs impact on individual and community health.

VI. Funding Need

Staff and partners should be able to produce much of the content with specific funding. However, funds may be necessary to create videos and purchase booth space for “outreach-in-a-box” events. Detailed funding needs will be identify as the project starts underway. Initial project efforts will focus on education and outreach programs that do not require funding beyond staff time.

VII. Project Outline

This project will be a combination of small education and outreach programs. To being the process of creating these small programs, OEHS will first:

1. Meet with partners: Partners will be local health department staff, VDH media specialist, other interested agencies, and industry partners such as: the Department of Environmental Quality, the Virginia Household Water Quality Program, the Virginia Water Well Association, the Virginia Onsite Wastewater Recycling Association, among others.

OEHS and our partners will then set out to:

2. Determine topics and messages: This will begin the process of selecting the different small education and outreach programs that will form the overall onsite sewage and private well education and outreach program. Each individual program will have its own unique message, under the umbrella of the overall program message of “Improving individual and community health.”

Once topics and messages are determined the group will then set out to:

3. Set goals and objectives: Again, each individual program will have its own unique goals and objectives, under the umbrella of the overall program objective and goal.

Partners will then be asked to help:

4. Develop material:

And;

5. Disseminate content:

Once the individual programs are underway, OEHS will:

6. Monitor results: The method for monitoring results will be established by the group during initial development of the program. Results will be shared with partners.

OEHS will then:

7. Meet with partners: These meetings will be to discuss results of the program and determine whether modifications to the individual or overall program are necessary.

Finally, OEHS and partners will:

8. Modify material: Material will need to be kept up to date to improve results and to incorporate any statutory or regulatory changes in the onsite sewage or private well program.

~~June~~ ~~January 14~~, 2017~~5~~

MEMORANDUM

TO: District Health Directors
Environmental Health Managers
Office of Environmental Health Services Staff
~~VPI Contract Soil Scientists~~
Onsite Soil Evaluators
Professional Engineers

GMP #2017~~5~~-01

THROUGH: Marissa J. Levine, MD, MPH, FAAFP
State Health Commissioner

THROUGH: Allen Knapp, Director
Office of Environmental Health Services

FROM: Dwayne Roadcap, Director
Division of Onsite Sewage and Water Services, Environmental Engineering
and Marina Programs

SUBJECT: GUIDANCE MEMORANDUM AND POLICY 2017~~5~~-01: Onsite Sewage Application
Expectations and Requirements. This policy revises GMP 2015-01. GMP 2015-01 is
~~hereby rescinded.~~

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Part I: Background, Scope, General Requirements

A. Authority.

This policy is authorized by the *Private Well Regulations* (12 VAC 5-630, the *Well Regulations*), the *Sewage Handling and Disposal Regulations* (12 VAC 5-610, the SHDR), the *Regulations for Alternative Onsite Sewage Systems* (12 VAC 5-613, the AOSS Regulations) and the *Alternative Sewage Treatment Discharging Regulations for Single Family Homes* (12 VAC 5-640, the Discharging Regulations). This interim policy is further authorized by §32.1-164 of the *Code of Virginia (Code)*, which provides the Board of Health (Board) with the powers and duties to establish:

1. Processes for filing an application for an onsite sewage disposal system permit with the Virginia Department of Health (VDH).
2. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage construction permits.
3. Criteria for granting, denying and revoking permits for onsite sewage disposal systems.

B. Purpose, Scope, and Applicability.

The purposes of this document are to:

1. Inform applicants of the expectations for certification letters, subdivision approvals and construction permits in the onsite sewage and private well programs;
2. Provide guidance to agency staff and private sector professionals for processing the above applications; and
3. Establish expectations and deadlines for processing applications.

Comment [TD1]: This policy lays out roles for the private sector also.

This policy applies to all applications submitted to the VDH, including applications with supporting work from private sector designers. VDH shall accept, review, and approve or deny applications in accordance with the *Code*, applicable regulations, and VDH policies.

C. Definitions. The following words and terms have the following meanings unless the context clearly indicates otherwise:

“Backlog” is deemed to exist when the processing time for more than 10% of a local or district health department’s complete bare applications for construction permits exceeds a predetermined number of working days (e.g., a 15-day backlog exists when the processing time for more than 10% of permit applications exceeds 15 working days). When calculating backlogs, only applications for construction permits shall be counted.

“Bare Application” means an application for a construction permit or a certification letter submitted without supporting documentation from a private sector designer.

“Complete Application” means an application for a construction permit or certification letter that includes all necessary information needed to process the application as specified by code, regulation or this policy.

“Deemed Approved” or “Deemed Approval” means that VDH has not taken action to approve or disapprove an application for a permit, an individual lot certification letter, multiple lot certification letters, or subdivision approval for residential development within the time limits prescribed in §§ 32.1-163.5 and 32.1-164 G of the *Code of Virginia*. In such cases, an application submitted in proper form pursuant to this chapter is deemed approved. “Deemed approved” means that the application is approved only with respect to the Board of Health’s regulations.

Sites previously denied by VDH and proprietary, pre-engineered systems deemed by VDH to comply with the Board’s regulations are not subject to the provisions of deemed approval.

“Multiple Lot Certification Letters” means two or more applications for certification letters filed by the same owner for existing or proposed lots to serve detached, individual dwellings.

“Onsite Soil Evaluator” (OSE) means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.

“OSE/PE” means a licensed onsite soil evaluator, a professional engineer, or a professional engineer working in consultation with a licensed onsite soil evaluator.

“Processing Time” means the number of working days from the date a complete application is received by a local health department to the date a permit or certification letter is issued or denied. Working days characterized by severe weather conditions shall not be included in any calculation of processing time.

Comment [TD2]: Changed to be in alphabetical order.

“Professional Courtesy Review” means a site-specific field review requested by an OSE/PE prior to the submission of an application for a construction permit or certification letter or a general field consultation (not site-specific) regarding a proposed subdivision.

~~“Processing Time” means the number of working days from the date a complete application is received by a local health department to the date a permit or certification letter is issued or denied. Working days characterized by severe weather conditions shall not be included in any calculation of processing time.~~

“Single Lot Construction Permit/Certification Letter” means one application filed by an owner for a sewage disposal system construction permit or certification letter to serve an individual dwelling on one lot or parcel of land.

“Subdivision Review” means the review of a proposed subdivision plat by a local health department for a local government pursuant to a local ordinance and §§ 15.2-2242 and 15.2-2260 of the *Code of Virginia* and 12 VAC 5-610-360 of the *Sewage Handling and Disposal Regulations* for the purposes of

determining and documenting whether an approved sewage disposal site is present on each proposed lot.

D. Roles and Responsibilities.

1. The Virginia Department of Health (VDH) shall:

- a. Review applications as necessary to assure compliance with applicable regulations and the department's policies prior to approval or disapproval of an application.
- b. Conduct paperwork (Level 1) and field (Level 2) reviews prior to approving or denying applications as necessary to protect public health and the environment.

~~e.~~ Conduct construction inspections of at least 20% of private sector designed onsite sewage systems and 100% of private wells in order ~~as necessary~~ to protect public health and the environment.

Comment [TD3]: This change follows HB 2477.

42

~~d.c.~~ Provide a site-specific field courtesy review when requested by an OSE/PE as time and resources may allow. Such requests shall not be included in any calculation of backlogs nor shall they be subject to the time limits contained in this policy or to deemed approval. The professional courtesy review is voluntary and will be provided at the sole discretion of the local health department. Staff will not render case decisions for requests for courtesy reviews.

~~e.d.~~ Initiate procedures to revoke or modify permit approval, certification letter or subdivision approval when there is reason to believe the approval does not substantially comply with applicable regulations. VDH may revise a permit, certification letter, or subdivision approval upon the owner filing a new application or as outlined in Part III Section C of this document.

f. Incorporate onsite sewage system and private well data into community health assessments. VDH shall systematically collect comprehensive data, conduct thorough analysis and develop priorities in order to provide a basis for decision making. The ultimate goal of a community health assessment is to develop strategies to address the community's health needs and identified issues.

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Comment [TD4]: This change follows HB 2477.

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2. The OSE/PE shall:

- a. Certify that work performed meets all applicable regulations when that work is used to seek a permit, letter, or other approval from VDH.
- b. Assure site evaluations and designs comply with all applicable regulations and this policy when applicable. See GMP #153 (or successor policy), Va. Code § 32.1-163.6, and other requirements within this policy.
- c. Inspect sewage systems installed based upon work submitted in support of a permit application subsequently approved by VDH.

d. Complete an inspection and provide an inspection report and a completion statement to VDH for any sewage disposal system installed pursuant to a construction permit based on a design certified by the OSE/PE. ~~VDH may, but is not required to, inspect systems designed by a private sector OSE/PE.~~

Comment [TD5]: Following HB 2477.

~~e. Disclose to property owners when a conventional onsite sewage system is an option and document disclosure on the cover page under the certification statement. The certification statement will include the following "*I have disclosed to the owner that a conventional onsite sewage system is / is not an option.*"~~

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Comment [TD6]: Following HB 2477.

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3. Professional Relationships

VDH staff and private sector designers must be mindful of the sometimes subjective nature of onsite sewage system evaluations and designs. On any site there may be a number of possible solutions to install an onsite sewage system, all of which must comply with the regulatory requirements.

It is paramount that VDH staff and private sector designers respect one another's professional judgment in such variable circumstances. A private sector designer forms an independent professional opinion based on an objective evaluation of all the relevant information available and his/her professional judgment. At the same time, VDH staff is equally qualified to form independent professional opinions based on an evaluation of the relevant information available.

When making case decisions, VDH employees must distinguish their professional opinion from an administrative responsibility to process permit applications based on facts. It is the private sector designer's responsibility to assure that his/her evaluation and design are completed in accordance with all applicable laws and regulations. Deference should be given to the private sector designer's professional judgment unless factual evidence is available to show that an evaluation and/or design does not comply with applicable laws and regulations.

When problems occur, VDH is obligated to take appropriate enforcement actions to assure public health and environmental protection. Local and district environmental health staff and directors are responsible for problem solving situations encountered regarding site approvals, system design, and construction.

VDH is a partner in trying to identify solutions. Private sector designers are expected to take primary responsibility for solving problems on sites where a permit is requested based on the private sector designer's supporting documentation. In all cases, the first steps to resolving problems should attempt to identify non-adversarial solutions that are mutually agreeable to the owner, the designer, and the agency.

E. General Requirements.

1. All requests for VDH approvals or reviews must be made on the appropriate application form (or in writing for courtesy reviews). The owner of record must give VDH permission to enter

the property to process the application or request. Generally, applications for construction permits and certification letters begin with filing an application; requests for review of proposed subdivisions are initiated by a local government; and requests for courtesy reviews are initiated by a private sector OSE/PE.

2. All evaluation reports and designs submitted to VDH must be in the form specified by regulation, the Code of Virginia, and applicable agency policy. The designer must certify that the application substantially complies with the applicable regulations.
3. With respect to individuals involved in the design of any onsite sewage disposal system, VDH will require the designer to affix a professional engineer (PE) seal or provide a signed certification statement stating that the designer is exempt from the engineering requirements. The exemption statement shall identify the specific exemption under which the plans and specifications were prepared and certify that the designer is authorized to prepare such plans pursuant to the exemption. If the design is submitted without the required seal or statement, the application will be considered incomplete and will not be accepted. If the required seal or statement is provided, the local health department will evaluate the work for compliance with VDH regulations and policies and render an appropriate decision. Upon request, VDH will provide the Department of Professional and Occupational Regulation (DPOR) with reports containing information on individuals who invoke the exemption from the engineering requirements and information on the number and type of systems designed pursuant to said exemption.
4. The owner of the property or his agent is responsible for filing an application with the local health department. A complete application is required to apply for and receive a construction permit, certification letter, or denial.
- 4.5. Valid construction permits for onsite sewage systems and private wells are transferable to new property owners. Valid construction permits remain in force through property transfers. A new application is not required and the construction permit and operation permit will remain in the original owner's name.

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Comment [TD7]: Change follows HB 2477.

Part II: Applications

A. Applications: General

1. Incomplete applications delay timely and accurate decision making. Applicants are encouraged to assure all submittals are complete at the time of submission by following the guidelines below.
2. Applications submitted to VDH are either bare applications (i.e., without evaluation or designs from a private sector OSE/PE) or applications with complete supporting documentation as required for the type of application currently submitted (e.g., construction permit, certification letter, et al.) from a private sector OSE/PE.
3. This section outlines the minimum administrative and documentation requirements for processing an application. VDH staff OSEs are required to comply with the Work Product

Expectations (WPEs) listed in Part II Section J below. Private sector OSEs and PEs are strongly encouraged to comply with the WPEs. VDH may make reasonable requests for additional documentation for any application when the agency deems such information necessary for making a case decision; failure to provide such documentation may result in denial of the application.

B. Construction Permit Applications

1. General: All applications with supporting work from a private sector OSE/PE for construction permits shall contain the following:
 - a. The correct and complete application;
 - b. The appropriate fees;
 - c. A site and soil evaluation report;
 - d. A proposed well site location and well specifications (when a private well is proposed);
 - e. Construction drawings and specifications for the system; and
 - f. A statement *on the cover page* certifying that the site and soil conditions and design substantially comply with applicable regulations.
 - g. When the application is for a repair permit or a voluntary upgrade permit, a completed Condition Assessment Form Malfunction ~~Assessment~~ (Form 14).

Comment [TD8]: This part is to conform with the voluntary upgrade/repair policy.

For bare applications, a VDH OSE shall provide the items c through g as part of the application processing procedure.

2. System Designs.
 - a. The OSE/PE must provide sufficient detail to allow an installer and well driller to accurately construct the onsite sewage system and private well (if applicable). Plans and specifications must be sufficient to allow the successful installation of the treatment works.
 - b. Construction drawings shall comply with 12VAC5-610-460. As a minimum, drawings must show property lines, all existing and proposed structures, existing and proposed sewage systems and water supplies, slope, any topographic features which may impact the design of the system and well (if applicable), and existing and proposed easements and utilities within a distance from the edge of the proposed soil absorption system and reserve area (when applicable) equal to the horizontal setback required for that particular feature (e.g., 70 feet for shellfish growing waters, 100-feet for Class III-C wells). The designer should provide any other information necessary to determine compliance with the applicable horizontal setbacks contained in Table 5.4 of the SHDR, 12VAC5-610-950, and 12VAC5-613-200.
 - c. When applicable, the drawing of the proposed sewage system shall show sewer lines, septic tank, treatment units, pump station, conveyance system, reserve area, and other relevant features which may affect the proper operation and

functioning of the system or be affected by the system. When a private drinking water supply is to be located on the same lot, all sources of pollution necessary to determine compliance with Table 3.1 of the *Well Regulations*, 12VAC5-630-380, shall be shown.

- d. Design calculations used to establish the design parameters must be included where applicable:
 - i. Calculations indicating that the proposed design complies with minimum separation distance to seasonal ground water, rock, or other limiting factor shall be provided to determine compliance with Tables 4.3 and 4.4 of the SHDR, 12VAC5-610-597, and the performance requirements of the *AOSS Regulations*, if applicable.
 - ii. Minimum depth of trenches and separation of trenches shall be provided to determine compliance with 12VAC5-610-950.
 - iii. Pump tank volumes and emergency storage requirements shall be provided to determine compliance with 12VAC5-610-880.
 - iv. When a pump is used in an onsite system design, the calculations shall show the static head, friction head and total dynamic head at the design flow of the pump to determine compliance with 12VAC5-610-880.
 - v. Trench bottom area and number of trenches shall be provided as necessary to determine compliance with Table 5.4 of the SHDR, 12VAC5-610-950, or Table 1 of the *AOSS Regulations*, 12VAC5-613-80, when applicable.
 - vi. Calculations for low pressure distribution, drip irrigation, etc. shall be provided as necessary to determine compliance with 12VAC5-610-940, 12VAC5-610-955, and the performance requirements of the *AOSS Regulations*, 12VAC5-613-80 thru 110, when applicable.
 - vii. Calculations for Wisconsin mound, other fill systems, etc. shall be provided as necessary to determine compliance with 12VAC5-610-960 and the performance requirements of the *AOSS Regulations*, 12VAC5-613-80 thru 110, when applicable.

Additional information may be necessary depending on the regulations applicable to the specific site. See 12VAC5-610, 12 VAC5-613 and Va. Code §32.1-163.6 for more information.

C. Certification Letter Applications

1. All applications submitted pursuant to Va. Code §32.1-163.5 with supporting work from a private sector OSE/PE for certification letters must include the following information:

- a. The correct and complete application;
- b. The appropriate fees;
- c. A site and soil evaluation report;
- d. A site sketch in compliance with 12VAC5-610-460;
- e. A proposed well site location and well class (when a private well is proposed);
- f. Information on proposed treatment level, proposed trench bottom area and proposed sewage volume and flow; and
- g. A statement on the cover page certifying that the site and soil conditions substantially comply with applicable regulations.

When processing a bare application for a certification letter, the VDH OSE shall include items c through g.

2. Each site certified by an OSE/PE for a certification letter must be located by surveying the perimeter of the soil absorption area and showing that area on a survey plat unless waived pursuant to this policy. This plat should be incorporated as part of the site and soil evaluation report
3. All applications for multiple certification letters must include the information for a single-lot certification letter and be processed in accordance with local ordinances for subdivision reviews. Additionally, a preliminary subdivision plat that provides the information specified in paragraph 1 is expected.

Comment [TD9]: We can change the policy to disallow survey waivers for certification letters.

D. Subdivision Review Applications

1. All applications for reviewing proposed subdivisions must come from an authorized agent of the local government having jurisdiction. An owner or applicant cannot initiate a request for a subdivision review independent of the local subdivision process.
 - a. The subdivision process is a local function that is governed by local ordinances.
 - b. Va. Code §15.2-2242 of the *Code* provides that localities may adopt ordinances requiring the applicable health official to render a preliminary opinion regarding the suitability of the subdivision for the installation of subsurface sewage disposal systems.
 - c. Va. Code § 15.2-2260 provides that a local subdivision agent must forward preliminary plats to appropriate state agencies if approval of a feature or features of the plat by a state agency is necessary. This section further provides that any state agency making a review of a plat must complete its review within 45 days from receipt. If the agency does not approve the plat, then it must state the specific reasons for disapproval in writing.
 - d. The SHDR provides guidance when review of subdivision plats is required by local ordinances. All requests for subdivision review must include the following:

- i. A letter from the authorized agent of the local government requesting review of the proposed subdivision and a statement certifying that the subdivision package has been determined to be complete;
- ii. Site and soil evaluation reports by a OSE/PE for each proposed lot;
- iii. Proposed well site locations and well class when private wells are proposed;
- iv. A preliminary subdivision plat. The plat must include all the information required by local ordinances and the following: locations of proposed onsite sewage systems and reserve areas (if applicable), all proposed and existing streets, utilities, storm drainage, water supplies, easements, and lot lines for each proposed lot, and original topographic contour lines by detail survey. The plat should be prepared according to suggested scales contained in Appendix L of the *SHDR*, 12VAC5-610-1170:7.
- v. A statement on the cover page certifying that the site and soil conditions and designs substantially comply with applicable regulations.
- vi. A signed statement from the owner of record giving VDH permission to enter the property for the purposes of reviewing the site and soil conditions both prior to the review and approval and afterward (if necessary) for quality control purposes and to protect public health and the environment.

E. Documentation Required for Site Evaluation Reports.

1. All reports must be properly marked as substantially complying (approved) or not complying (rejected) with applicable regulations.
2. Each soil profile hole augered or dug during a soil investigation must be described completely and accurately and located on a site sketch. All holes used to establish the suitability of a site must show that the site substantially complies with applicable regulations.
3. The SHDR require a minimum of five soil profile descriptions for each separate area being established as suitable for a soil absorption system (e.g. primary and/or reserve area). If, in the opinion of the site evaluator, a site exhibits sufficient uniformity of topography and profile, the number may be reduced to three. Profile holes must be placed so as to be representative of the soil absorption area.
4. The depth of each major horizon of all soil profiles must be documented using U. S. Department of Agriculture soil textural classes (including the percent and size of coarse fragments) and soil colors. Soil colors (matrix and mottle patterns) are to be determined and reported using the *Munsell Soil Color Charts*. All colors must be reported using the Munsell notations for hue, value and chroma (e.g. 5YR 5/6). Color names may be added. Abbreviations of terms (e.g. soil color, texture, etc.) are not acceptable.

5. All holes or pits in the area of the proposed soil absorption system must be described as to depth to seasonal water table or seasonal saturation.
6. Depth to rock or restrictive layers must be described when applicable.
7. The estimated percolation rate must be reported. When permeability tests are conducted (including percolation tests, hydraulic conductivity tests, and other measures of soil permeability), a copy of all test results must be included. Permeability tests conducted by a licensed designer do not require VDH supervision.
8. Estimated shrink-swell potential, if moderate or greater, must be noted.
9. Soil concretions shall be noted, where applicable.
10. Other relevant soil features that, in the opinion of the evaluator, are necessary to document that the site is sufficient to accommodate an onsite sewage treatment and dispersal system and to support the proposed design.
11. The site evaluation shall indicate the landscape position and the degree of slope in the area of the proposed system installation.
12. A site sketch in accordance with 12VAC5-610-460 shall be provided with each site and soil evaluation report. See Part II, Section J (9), page 18, of this policy for Work Product Expectations related to site sketches.

F. Survey Plats.

This section of the policy is intended to supersede GMP 152 and is applicable to permits and certification letters whether or not such work is supported by private sector professionals.

1. All applications for sewage disposal system certification letters, onsite and sewage disposal system construction permits and alternative discharging systems must be accompanied by a copy of a survey plat unless waived pursuant to this policy. For construction permits only, private sector OSEs/PEs and VDH OSEs must show the perimeter of the soil absorption area(s) on a copy of the survey plat. In addition to the survey requirement, construction permit drawings may be created to scale by hand, computer assisted drawings, etc. VDH does not prescribe the professional's methods or equipment to accomplish the performance expectations of this policy; however, VDH strongly recommends that all sites, including those for construction permits, be surveyed by a licensed surveyor and platted accordingly.
 1. identifying the proposed sewage disposal system and/or reserve area, proposed dwelling, and any other features impacting placement of the sewage disposal system, unless waived pursuant to this policy.
2. ~~All applications for alternative discharging systems must be accompanied by a survey plat prior to the issuance of the permit unless waived pursuant to this policy.~~

Comment [TD10]: To clarify survey requirement.

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~~3.1~~ The survey requirement for sewage disposal system certification letters, onsite sewage disposal system construction permits and alternative discharging systems ~~or onsite sewage system construction permits and sewage disposal system certification letters~~ may be waived if the following criteria are met:

- a. The owner shall submit a complete application and fee if applicable.
- b. The owner shall request a waiver from the survey requirement by completing Form 11.
- c. The two main goals are to ensure the sewage system is located on the correct property and in the correct location on the property. The Environmental Health Specialist Senior (EHSS) shall evaluate the risk that the goals will not be met. Before granting a waiver, the local health department shall determine there is a low risk of improper placement of the sewage system. The EHSS will determine the risk by reviewing the application package for completeness, evaluating the owner's answers on Form 11, and by conducting a complete site and soil evaluation for bare applications or a Level 2 Review for applications with supporting work from a private sector OSE/PE, which includes verification of identified property boundary markers.
- e.d. Since certification letters do not expire, there must be a high level of confidence the proposed absorption area(s) can be re-located in the distant future prior to granting a survey waiver. Triangulation of the site(s) must be reliable, sound and easy to duplicate. An example may be an absorption area proposed within 5'-10' from two permanent well defined markers.

~~4.2~~ Prior to issuance of an Operation Permit where a survey plat waiver has been granted, the owner shall sign a statement (See Form 12) confirming that the sewage disposal system has been installed on his property and in the permitted location.

G. Denials of Applications (not a principal place of residence):

The owner(s) or agent thereof shall indicate on the application form whether or not the requested approval is a construction permit or certification letter for a system that is intended to serve his or her principal place of residence. The following procedures apply for denials for construction permits and certification letters when the applicant has not indicated that the system intends to serve his or her principal place of residence; the following procedure also applies to all denials of subdivision reviews.

1. VDH will deny applications that do not comply with applicable regulations and cite the applicable regulatory requirements. Denial letters must clearly state in plain English the rights and administrative remedies available to the owner.
2. The applicant must elect which potential remedy to pursue. The applicant may not pursue multiple administrative remedies simultaneously. With denials for systems not intended to serve a principal place of residence, the mutually exclusive administrative remedies are as follows:

- a. The applicant may submit one new application within 90 days from the date that the original application was denied without paying an additional fee;
 - b. The applicant may appeal the denial by requesting an informal fact-finding conference (IFFC) before VDH pursuant to §2.2-4019 of the *Code*. To obtain an IFFC before VDH, the applicant must submit a written request to the District Health Director within 30 days of receipt of the denial; or
 - c. For denials of submittals under §32.1-163.6 of the *Code*, the applicant or the professional engineer responsible for the onsite sewage system design, with the applicant’s written consent, may request an IFFC before the engineering design review panel. To request an IFFC before the engineering design review panel, a written request must be submitted to the District Health Director within 30 days of the professional engineer’s receipt of the denial.
3. If the applicant elects to submit a new application within 90 days and does not appeal the original denial, no fee will be charged for that second submittal. However, VDH will assess the full fee for any subsequent application. The time limits for processing the application (when applicable) begin anew on the day of each resubmission. The following table illustrates the fees to be assessed when processing applications:

Table 1: Fees for Re-submissions – Not a Principle Place of Residence (new applications)

Application	Fee Attached
First Application	Full Fee
Second Application if submitted within 90 days of denial of first application (and the applicant does not appeal the original denial)	No Fee
Any subsequent application	Full Fee

4. An applicant for a construction permit or a certification letter may request a refund of the application fee if the applicant voluntarily withdraws his application before VDH issues or denies the requested permit, letter or subdivision review. The application fee will be refunded if the application is withdrawn before VDH makes a site visit for the purpose of evaluating the application.

H. Denials of applications (principal place of residence)

The owner(s) or agent thereof shall indicate on the application form whether or not the requested approval is a construction permit or certification letter for a system that is intended to serve as his or her principal place of residence. The following procedures apply to denials of onsite sewage construction permits when the applicant has indicated that the system is intended to serve as the applicant’s principal place of residence.

1. VDH will deny applications that do not comply with the applicable regulations and cite the applicable regulatory requirements. Denial letters must clearly state in plain English the rights and administrative remedies available to the owner.

2. The applicant must elect which potential remedy to pursue. The applicant may not pursue multiple administrative remedies for the same denial. With denials for systems intended to serve a principal place of residence, the mutually exclusive administrative remedies are as follows:
 - a. In accordance with 12VAC5-620-90, the owner or agent thereof may apply for and obtain a refund of the application fee for any denial of a permit or letter on land on which the owner seeks to construct his or her principal place of residence. He or she may do so by executing an affidavit (Form 13) and submitting it to the local health department within 12 months of the date of denial. Local health departments shall attach a copy of Form 13 to any denial of a construction permit or certification letter for principal place of residence. The applicant may not obtain a refund if he or she is pursuing an administrative appeal of the denial or if he or she has submitted another application for which the fee was waived. Such application fees shall not be refunded unless any administrative appeals based on the denial have either been resolved or waived by the applicant; such waiver can be explicit via the execution of affidavit Form 13 or implicit by virtue of a failure to exercise appeal rights within the timeframe specified in the denial letter;
 - b. The applicant may submit one new application within 90 days from the date that the original application was denied without paying an additional fee;
 - c. The applicant may appeal the denial by requesting an IFFC before VDH pursuant to Va. Code Section 2.2-4019. To obtain an IFFC before VDH, the applicant must submit a written request to the District Health Director within 30 days of his or her receipt of the denial; or
 - d. For denials of submittals under §32.1-163.6 of the *Code*, the applicant or the professional engineer responsible for the onsite sewage system design, with the applicant's written consent, may request an IFFC before the engineering design review panel. To request an IFFC before the engineering design review panel, a written request must be submitted to the District Health Director within 30 days of the professional engineer's receipt of the denial.
3. If the applicant elects to submit a new application within 90 days and does not appeal the original denial or request a refund, then no fee will be charged for that second submittal. VDH will assess the full fee for any subsequent application. The time limits for processing the application (when applicable) begin anew on the day of each resubmission.

Table 2: Fees for Re-submissions – Principle Place of Residence (new applications)

Application	Fee Attached
First Application	Full Fee
Second Application if submitted within 90 days of denial of first application (and the applicant does not appeal the original denial or request a refund)	No Fee

Any subsequent application	Full Fee
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4. An applicant for a construction permit or a certification letter may request a refund of the application fee if the applicant voluntarily withdraws his or her application before VDH issues or denies the requested permit or letter. The application fee will be refunded if the application is withdrawn before VDH makes a site visit for the purpose of evaluating the application.

I. Prioritizing Applications

This section is intended to replace GMP 51 and provide guidance for processing applications to meet applicant needs and make the best use of agency resources. It is not possible to develop a set of criteria that will account for all possible circumstances, but VDH staff should follow these guidelines as closely as possible.

1. Applications for onsite sewage permits and approvals are categorized as follows, in order of priority:
 - a. Priority Level 1: Applications for construction permits to repair failing systems.
 - b. Priority Level 2: Applications for construction permits where the applicant has concurrently applied for a building permit.
 - c. Priority Level 3: Applications for certification letters.
 - d. Priority Level 4: Applications for voluntary up-grades.
 - e. Priority Level 5: Applications for multiple-lot certification letters or subdivision approvals.
2. Applications for construction permits to repair a failing system should always receive immediate attention, due to the public health hazard.
3. Each district may set the proportions of time among the different priority levels to best meet local needs, unless processing time for priority levels 1 and 2 exceeds 15 days. In that case, processing of lower level priority applications should be delayed as necessary to allow processing of priority 1 and priority 2 applications within 15 days.
4. VDH's policy is to encourage the use of private sector OSEs and PEs for site evaluation and design. Districts should consider that processing applications with complete supporting documentation from the private sector requires less staff time when prioritizing applications *within* each priority level (e.g. all other aspects of the applications being equal, if a bare application for new construction is submitted on the same date as an application for new construction with supporting documentation from a private OSE/PE, then the application with supporting documentation should receive priority for review). Further, districts should encourage applicants to obtain the services of a private sector OSE/PE.

J. Work Product Expectations:

The following are Work Product Expectations (WPEs) established for all designers of onsite sewage systems, including those employed by VDH. These WPEs are intended to serve as guidelines for documentation *in addition to the minimum requirements outlined previously in this document*. The

WPEs are the standard expected of VDH employees. Private sector OSEs and PEs are strongly encouraged to comply with these standards since doing so should reduce misinterpretations and lead to more efficient processing of applications.

A failure to adhere to these WPEs shall not result in the denial of an application. However, as is the case with any application, VDH has discretion to conduct a Level 2 review if the designer fails to adhere to a particular WPE. If the Level 2 review reveals that applicable regulations have not been complied with, then VDH shall deny the application.

~~1-2.~~ The pages of all submittals should be consecutively numbered beginning with the first page using the format “Page x_of y”. The cover page should, at a minimum, contain a list of the documents contained in the supporting design package, a property identification, the property owner’s name and address, the OSE/PE’s contact information, date of plans, and revision dates. To assure that contractors have the correct set of plans, the health department’s approval letter must correspond to the date on the cover page or the date of last revision on the cover page, if revisions are made.

~~2-3.~~ OSE/PEs, at his or her discretion, may make minor revisions to a permit, certification letter or subdivision approval issued in reliance on his or her evaluations or designs. Private sector OSE/PEs should notify VDH when the OSE/PE has revised his or her evaluations and designs. All OSE/PEs should notify the property owner when such evaluations and designs have been revised. All revisions must comply with applicable regulations. See Part III, Section C of this document for additional details.

~~3-4.~~ All applications with footprints, sites, and areas planned for treatment works and/or private wells should have the proposed areas identified with accuracy and precision of three feet or less. The OSE/PE or surveyor must provide sufficient information to allow a person with the knowledge, skills, and abilities of an Environmental Health Specialist (EHS), an onsite wastewater system installer, or water well systems provider to locate the area in the field using the paperwork and field markers, when applicable. Field markers may include permanent field stakes or distances and bearings to identifiable landmarks. Trees and wooden stakes are not considered permanent field markers.

~~4. An OSE/PE may opt to show the location of a site for a construction permit (not a certification letter or proposed subdivision) by drawing the perimeter of the absorption area to scale on a survey plat or a copy of a survey plat. VDH does not prescribe the professional’s methods or equipment to accomplish the performance expectations of this policy; however, VDH strongly recommends that all sites, including those for construction permits, be surveyed by a licensed surveyor and platted accordingly.~~

5. Preliminary subdivision plats for subdivision applications should show the immediate area in and around each proposed system, including the soil absorption system, using a contour interval shown in Table 3; the contour area shown outside the soil absorption system should be sufficient to establish the relationship of the area to relevant topographic features such as, but not limited to, drainage ways, sink holes, road cuts, and steep slopes. A minimum distance of 20 feet is recommended.

Table 3: Contour Interval for Subdivision Plats

Slope (%)	Contour Interval
0-5	2
6-25	5
26-50	10

6. All submittals should document compliance with Chesapeake Bay Preservation Act requirements and other applicable state laws and local ordinances;
7. All drawings should be drawn to scale. Critical dimensions must be shown on the drawing. This includes measurements to critical system components (e.g. distribution box, well site or area, etc.) which should be located using triangulation from appropriate field markers. When a well area is designated, the boundaries shall be clearly defined and limited on all sides.
8. The WPEs related to site evaluations are stated below.
 - a. All site evaluation reports should be signed and dated.
 - b. The maximum acceptable separation distance between observation holes during a soil investigation is 100 feet. The use of common holes between adjacent proposed sewage disposal system sites to describe both sites should be avoided.
 - c. Soil features should be described using the standards contained in the USDA NRCS Field Book for Describing and Sampling Soils.
 - d. When backhoe pits or other excavations are used during a site and soil evaluation, the complete range of soil characteristics exposed should be described (depth to mottles, rock percentage and depth to rock or other restrictive layers and variability in rock depth). OSHA Regulations apply when working in pits.
 - e. A site and soil evaluator should describe the following soil characteristics as he or she deems necessary:
 - i. Soil consistence;
 - ii. Soil structure (grade, size and type);
 - iii. Soil color patterns (kind, quantity, size, contrast, color, shape location, moisture state, hardness and boundary);
 - iv. Soil parent material and physiographic province; and
 - v. Estimated clay mineralogy and the existence of observable minerals (feldspar, mica, quartz, etc.)
 - vi. Root penetration.
9. The WPEs related to site sketches are as follows:

- a. Site sketches should represent the topography in the vicinity of the proposed onsite sewage system as well as the topography in the vicinity of any private water supply (existing or proposed) so as to establish the topographic relationship between such water supplies and sources of contamination including, but not limited to, the proposed soil absorption system.
- b. Sketches should be neat, legible, and drawn to scale when possible. The sketch should provide accurate documentation (distances) for profile holes and other features and suitable reference points. The site sketch should show existing and proposed property lines for the subject property and any other property lines within ten feet of the perimeter of the proposed soil absorption area and/or proposed structure.
- c. Within 200 feet of the edge of the proposed soil absorption area, the following must be shown:
 - i. Existing and proposed wells, springs, and cisterns. If a private water supply is proposed, the location and construction of the proposed water supply (or supplies) must comply with the *Well Regulations*.
 - ii. Existing and proposed onsite sewage systems;
 - iii. Shellfish waters, lakes, streams, other bodies of water, and surface impoundments used for drinking water; and,
 - iv. Sinkholes, drainage ways, flood plains, drainage ditches, and tile drainage.
- d. Site sketches should document percent slope and direction (an acceptable topographic map may be substituted);
- e. Site sketches should document all existing and proposed structures, buildings, etc. within 100 feet of the perimeter of the proposed soil absorption area and private water supply (if applicable);
- f. Site sketches should document easements, rights of way, driveways, roads, and buried and above-ground utilities within 20 feet of the perimeter of the proposed soil absorption area.

Part III: VDH Review

A. Application Review.

1. All applications and fees must be logged in. Local and district health departments are responsible for entering data into VDH's data system, the Virginia Environmental Information System (VENIS). As a best practice, all applications should be reviewed for completeness at the time they are received. That way, if the application is incomplete for any reason, VDH can contact the applicant and/or designer to provide the missing information so that VDH can fully evaluate the application within the timeframes specified by the *Code of Virginia* and this policy.

2. An incomplete application should not be logged in, nor should fees be accepted for an application that is known to be incomplete at the time it is filed. Whenever possible, administrative support staff should be responsible for these tasks. If an incomplete application is accepted, it shall be denied.
3. VDH's program for reviewing applications for permits, certification letters, and requests for subdivision approval will employ two basic levels of review: the in-office (paperwork) Level 1 review and the field, Level 2 review.
 - a. A Level 1 review determines whether an application at face value is complete. The Level 1 review confirms the site and/or the design certified by the OSE/PE substantially complies with applicable regulations.
 - b. A Level 1 review consists of administrative and technical reviews and *does not include field review*. Local and district health departments should complete a Level 1 review of every application as soon as practicable.
4. For Level 1 reviews, staff should review VDH records to verify the site was not previously denied a permit and the proposed treatment works or well does not conflict with the minimum set back distances for features on adjacent properties. This review of VDH records constitutes a quality assurance review and is not a substitute for a sanitary survey, which is necessary to positively establish setbacks with certainty. The ultimate responsibility for establishing setback distances remains with the OSE/PE certifying the submitted work.
5. The Level 2 review (field check or quality assurance check) is a detailed onsite evaluation of the site conditions and the design certified by a private sector OSE/PE. The Level 2 review is discretionary and should be performed on at least 10% of applications submitted with supporting work from each private sector OSE/PE. In addition, staff is strongly encouraged to conduct a Level 2 review when a submittal lacks a WPE specified in this policy.
 - a. If a Level 2 review is not performed and the application complies with the minimum requirements of the applicable regulations and this policy based upon the Level 1 review, then a construction permit or certification letter must be issued within the required or expected time frames. Applications that do not comply with the minimum requirements of the applicable regulations must be denied. The denial must be linked to the appropriate OSE/PE using VENIS.
 - b. A Level 2 review assesses the performance of private sector evaluators and designers by sampling a subset of the work submitted by the OSE/PE.
 - c. Local and district health departments should complete Level 2 Reviews of a minimum of 10% of the sites and/or designs certified by each private sector OSE/PE. Local and district health departments may conduct additional Level 2 reviews as necessary.

- d. Level 2 reviews must be conducted within the processing times expected for the application. Staff should conduct Level 2 reviews prior to approving or denying an application, unless pursuant to a request from the owner or agent, the designer, or the contractor responsible for installing the system.
 - e. A Level 2 review may include conducting soils borings, examining backhoe pits or other excavations, a sanitary survey, permeability testing, or other actions necessary to assure that a site or design complies with applicable regulations.
 - f. The local or district health department will perform Level 2 reviews using the best methods available, including evaluating open backhoe pits or a hand auger. An owner will not be required to hire a backhoe for a Level 2 review if one is unavailable at the time of VDH's Level 2 review.
 - g. Except in extraordinary circumstances, the local or district health department shall notify the owner and the OSE/PE when intending to conduct a Level 2 review.
 - h. If a Level 2 review reveals that a site and/or a design do not substantially comply with applicable regulations, the application will be denied. The denial letter must be linked to the appropriate OSE/PE using VENIS.
6. The local health department shall provide a copy of each approval or denial based on an OSE or OSE/PE certification to the licensed individual that certified the site. Additionally, a copy of any Level 1 and Level 2 forms used in the review of the submittal shall be provided to the owner and the OSE/PE. This policy is not intended to create a burdensome procedure or extensive copying process. Sending a copy of the approval or denial letter including the permit identification number (when the approval is for a construction permit), and a copy of the Level 1 and Level 2 forms (when applicable), normally shall be sufficient to comply with this policy. If for whatever reason, the Department's permit is different from that certified by the OSE/PE, then the Department shall also include a copy of the permit, and an explanation of the revision(s), in addition to the approval letter so that all differences are readily identified.

B. Revalidating Expired OSE/PE Permits; Relying on Previous Certifications.

1. In general, VDH will rely upon the certified evaluation or design of an OSE/PE when considering renewal or revalidation of an expired permit as long as the OSE/PE provides reasonable assurance no substantive intervening changes have occurred.
2. When VDH has issued a construction permit in reliance upon the work of an OSE/PE and that permit has expired the following shall apply:
 - a. Pursuant to Va. Code § 32.1-164.1:1: "*if a building permit has been obtained or building construction has commenced, the permit may be extended for an additional 18 months.*" Unless the local or district health department is aware

of specific facts supporting a conclusion that the permit does not substantially comply with applicable regulations or no construction has commenced, then staff will extend the permit by adding eighteen months to the original term of the permit upon request. No additional extensions may be permitted.

- b. Before a permit is extended, the local or district health department will require a signed statement from the property owner or OSE/PE affirming that there has been no “substantial, intervening change in the soil or site conditions where the onsite sewage system is to be located and building construction commenced prior to expiration of the permit.”
- c. No new OSE certification is required when an applicant seeks to renew an expired permit with no changes in the design or location of the system or in the location of the structure.

3. In some circumstances new ~~certification~~ **certifications along with new applications and fees** are required. Examples of such situations include, but are not limited to, new approvals (letter, permit, or subdivision lot), modification of an existing approval, and changes to an existing or expired construction permit design.

Comment [TD11]: Following FAQ

C. Design Changes

The OSE/PE, with the consent of the owner, may make certain design changes to a valid construction permit without prior approval of the health department. No new application or fee shall be required. Such changes must comply with the following:

1. For onsite sewage systems the design change shall not affect any of the following design parameters:
 - a. The proposed daily flow (GPD);
 - b. The proposed waste strength (e.g. residential, commercial);
 - c. The proposed level of treatment (including nitrogen reduction and disinfection);
 - d. The proposed dispersal area foot print (location or size); or
 - e. The proposed dispersal method; (minor adjustments to the dispersal area are allowed).^[1]
2. All changes for onsite sewage systems must fully comply with all applicable codes, regulations and policies.
3. The designer shall provide the health department with complete documentation including a list of all changes and revised specifications, calculations and drawings as part of a complete revised design package. Such documentation should be submitted prior to installation of the system.

^[1]Minor adjustments will be allowed to installation depth and dispersal area configuration that are i) supported by site and soil evaluations on file (i.e., no additional site or soil evaluation required), ii) contained within the perimeter of the originally designated absorption area, and iii) do not require additional field (Level II) review.

4. The designer and owner are responsible for ensuring that all design changes are communicated to the onsite sewage system installer and/or water well system installer.

For private wells, all design changes will require a new application and a new fee. Therefore, it is vital that the OSE/PE discuss the proposed well location with the owner and their well driller (if possible) prior to submitting an application. The use of well areas is encouraged in areas deemed appropriate by the OSE/PE. The use of well areas can avoid unnecessary follow-up site evaluations. Where dry holes or low yielding wells are common, or other conditions indicate their use (such as with close loop geothermal well systems), a well area may be more appropriate than a well site. When a well area is designated and a dry hole is encountered, a well driller may drill multiple wells without reapplying for a new permit for each new site, provided the dry holes are properly abandoned in accordance with the *Well Regulations*.

VDH will review any changes before issuing an operation permit or well approval. Any changes that do not fully comply with this section and applicable regulations may result in the construction permit being deemed null and void. In such case, the owner will be required to submit a new application and a new application fee. If improperly installed, the owner may be required to abandon the sewage system and/or private well.

The designer and owner are responsible for assuring that any design changes fully comply with all applicable laws and regulations. The cost to correct an error created by a design change initiated by the owner or designer without prior approval by VDH will not be considered a hardship when processing a variance request.

D. Professional Courtesy Reviews.

1. VDH will provide consultative field reviews with an OSE/PE when requested if possible. The courtesy review must be requested prior to the filing of any application with VDH, or prior to filing any documents with a local government for a proposed subdivision. The courtesy review is discretionary and not subject to time limits.
2. Courtesy reviews are not intended to relieve an OSE/PE of the responsibility for determining whether a site complies with applicable regulations.
3. The OSE/PE requesting a courtesy review must file a request in writing and the property owner must provide permission for VDH to enter the property.
4. The OSE/PE must provide a brief, written description of the specific questionable or marginal site or soil feature where the courtesy review is being requested.
5. Requests should be logged into VENIS. All activities, evaluations, and results of the courtesy review shall be documented.
6. VDH determinations regarding site and soil characteristics from courtesy reviews are not case decisions and no written response is required. They cannot be appealed nor are they binding on any party.

7. VDH may limit professional courtesy reviews. If a local or district health department elects not to provide a requested courtesy review, it must inform the OSE/PE in writing.

E. Processing time limits for applications subject to deemed approval.

1. VDH shall review and process applications subject to deemed approval within the time frames specified in Table 4. If the application is denied, then VDH shall set forth in writing the reasons for denial.

Table 4: Processing Times for Applications subject to Deemed Approval

Type of Application	Time Limit
Individual Permit Application	15 working days
Individual Certification Letter	20 working days
Multiple Lot Certification Letter	60 days
Subdivision Review	60 days

F. Processing time limits for applications NOT subject to deemed approval.

1. Applications submitted pursuant to Va. Code Section 32.1-163.6 are not subject to deemed approval; however, the *Code* requires VDH to process them within 21 or 60 days, depending on the application.
 - a. Within 21 calendar days from the date of application for treatment works sized at 1,000 gallons per day or smaller, and within 60 calendar days from the date of application for treatment works sized at more than 1,000 gallons per day, the Department shall (i) issue the requested approval, or (ii) set forth in writing the specific reasons for denial.
2. Any application for a proprietary, pre-engineered system that has been deemed by VDH to comply with the Board’s regulations should be processed in the time frames identified in Table 4. VDH may accept evaluations and designs for such proprietary, pre-engineered systems in accordance with this policy; however, the processing time limits and deemed approval shall not apply to any such application.
3. For requests for courtesy reviews, VDH should inform the OSE/PE within seven days whether the courtesy review can be scheduled. The courtesy review should be made within 180 days of the request if possible.

Part IV: Final Inspections

A. General Requirements and Expectations:

1. An OSE/PE is expected to perform a final inspection for any sewage disposal system installed pursuant to a construction permit based on a design certified by the OSE/PE. VDH ~~shall may,~~ ~~but is not required to,~~ inspect ~~a minimum of 20% of~~ systems designed by ~~a~~ private sector OSEs/PEs. Installers ~~shall should always~~ notify the appropriate local or district health

Comment [TD12]: To follow HB 2477.

department whenever they are ready for a final inspection, ~~regardless of whether that inspection is the responsibility of a private sector OSE/PE or VDH,; regardless of whether that inspection is the responsibility of a private sector OSE/PE or VDH.~~ VDH staff shall increase inspections of onsite sewage systems to 100% by April 1, 2019.

2. Each OSE/PE should attempt to secure the contractor's completion statement at the time of inspection and file with the applicable local health department as soon as possible.
3. ~~Local and district health departments should perform final inspections of at least 10% of private sector OSE/PE designed systems.~~ Local and district health departments are discouraged from conducting final inspections as a routine method for accomplishing Level 2 Reviews.
4. Whenever an OSE/PE is responsible for the final inspection of an onsite system, that responsibility shall extend to any subsequent re-issuance of the permit (e.g. renewal, change of owner, etc.). VDH is responsible for informing the OSE/PE of the re-issuance of a permit by sending a copy of the permit approval letter to the OSE/PE who originally designed the system.
5. Whenever an OSE/PE conducts an inspection of a system and cannot approve it, the OSE/PE should immediately notify the owner in writing and send a copy of the notice to the appropriate local or district health department. The written notice must include an explanation of the reasons for the OSE/PE's refusal to approve. Whenever an OSE/PE requires corrective actions prior to determining a system is properly installed, the inspection report and completion statement must document those corrective actions.
6. OSE/PEs should always submit as-built installation drawings. Field measurements should be taken to the septic tank, the distribution box, and other necessary components. If the sewage system's location and details did not change from the construction permit, then the OSE/PE should note that information on the inspection report.

An OSE/PE is expected to perform a final inspection for any private well installed pursuant to a construction permit based on a design certified by the OSE/PE. VDH is required to inspect all private wells, including those installed pursuant to a construction permit based on a design certified by a private sector OSE/PE. The well driller shall notify the local health department and private sector OSE/PE (if applicable) prior to starting a new well. Inspections may be made during construction or prior to placing the well in service.

Index of Forms. Forms are available upon request from the Division or they may be obtained by visiting the VDH website: vdh.virginia.gov. Forms are subject to change without notice; therefore, all OSEs and PEs are encouraged to periodically review the VDH website to ensure they are using the most current forms.

- Form 1: Application for a Sewage Disposal System and/or Private Well Construction Permit
- Form 2: Cover Page
- Form 3: OSE/PE inspection form
- Form 4: Example request for subdivision review
- Form 5: Request for professional courtesy review
- Form 6: Site and soil evaluation report

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Form 7: Example construction drawing page

Form 8: Example system specifications worksheet

Form 9: Example private well specification worksheet

Form 10: Example private well abandonment specification worksheet

Form 11: Request for Survey Waiver

Form 12: Verification of Sewage System Location

Form 13: Refund Affidavit

Form 14: ~~Condition Assessment Form~~ ~~Malfunction Assessment~~

Comment [TD13]: We need to change the form on the website and state where the form is located in all three policies (2017-01, 2017-02 and 2017-03).

DRAFT POLICY **FOR REVIEW AND FEEDBACK**

SUBJECT: GUIDANCE MEMORANDA AND POLICY (GMP) 2016-04

PURPOSE: This policy establishes the procedure for processing a building official request for a safe, adequate, and proper determination pursuant to Va. Code § 32.1-165.

SCOPE:

This policy identifies the minimum review and paperwork needed to process a request from a local building official pursuant to Va. Code § 32.1-165. The referenced Code section requires building officials to seek and obtain authorization from local health departments prior to issuing a building permit. Authorization to issue those permits rests upon a health department determination the existing or proposed onsite sewage system is safe, adequate, and proper for the subject building designed for human occupancy. Exceptions to this policy will require approval and consultation with the Office of Environmental Health Services (OEHS).

The Virginia Department of Health (VDH) receives numerous types of requests for onsite sewage inspections and some situations fall outside the scope of this policy. For example, this policy would not necessarily apply to multiple requests from a building official for a community-wide need, perhaps because of a natural disaster (flooding, tornado, or hurricane). Another possible example could be when multiple sewage systems are located close together as found in a mobile home park and there is a long history of failing sewage systems at the location. In these types of situations, processing an individual request from the building official might not necessarily protect public health or groundwater supplies unless historical failures were addressed on a community-wide scale. This policy also does not address evaluation procedures for a sewage system being sold through a real estate transfer or a sewage system being evaluated as part of a revised subdivision plat.

For pools, decks, garages, pole barns, sidewalk installations, and other structures not designed for human occupancy, the local building official may ask VDH to determine whether proposed construction will interfere with the existing sewage system's function. For these situations, VDH lacks authority to determine whether the sewage system is safe, adequate, and proper as contemplated by the Code. However, as a courtesy to the building official, and by request (see attachments 2a and 2b), VDH may process the request (see attachment 3b).

AUTHORITY:

Va. Code § 32.1-165, as amended and effective as of July 1, 2016, provides authority for the procedures outlined in this policy (see attachment 4). Va. Code § 32.1-165 states, "No county, city, town, or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent." "Safe, adequate, and proper" means a treatment works that complies with the Board of Health's currently effective regulations. VDH may approve an older sewage system that does not comply with current regulations provided (1) the sewage system complies with the regulatory requirements in effect at

the time of its installation, (2) is not failing, and (3) can be expected to function properly given its design and construction for the sewage flow and strength.

Additionally, Va. Code § 32.1-165 allows VDH to accept a certified evaluation from qualified private sector professionals. VDH may perform an inspection of the private sector professional's work, but is not required to do so. The law also allows an owner to voluntarily upgrade an existing onsite sewage system.

In accordance with Va. Code §§ 36-98 et seq., 32.1-12, and 32.1-163, VDH and the Virginia Department of Housing and Community Development (VDHCD) agreed to coordinate respective jurisdictional responsibilities through a memorandum of agreement (MOA). The current MOA states when a local building official asks VDH for a determination of "safe, adequate, and proper," VDH will apply the standards required by current regulations to evaluate the request (see Attachment 8). Current regulations represent the minimum standards necessary to adequately protect public health, the environment, and groundwater supplies.

Va. Code § 32.1-164.1:1 allows owners with failing sewage systems, or those who want to voluntarily upgrade their sewage system the option to request a waiver from additional treatment and/or pressure dosing. The Commissioner shall grant any request for such waiver, unless she finds the failing system was installed illegally without a permit. Any such waivers shall be recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located.

BACKGROUND:

When a property owner wants to replace a mobile home, construct an addition to an existing dwelling, or replace a damaged or destroyed home, the owner must first obtain a building permit from the local building official. In certain cases, the local building official will ask VDH whether the existing sewage system is acceptable (or "safe, adequate, and proper"). In many cases, the sewage system does not comply with current health department regulations as the sewage system installation was completed under prior, less stringent requirements.

As a result, some property owners could spend considerable money to upgrade the existing sewage system to comply with current regulations, even though the owner could continue using the old sewage system (without change) but for the request for a new building permit. The amendments to Va. Code § 32.1-165 provide VDH discretion to approve an older sewage system as nonconforming to the current regulatory standards, provided the status quo remains the same (i.e., there is no change in sewage flow or strength; the sewage system was installed in accordance with regulations in effect at the time of installation; the sewage system is not failing; and the sewage system can be expected to function properly).

PROCEDURAL OUTLINE:

Staff is encouraged to work with respective local building departments to ensure excellent customer service and proper implementation of the Code and this policy. See attachment 1 for a

business flow path for processing requests pursuant to Va. Code § 32.1-165; requests are expected to be processed within 14 business days of receipt as follows:

1. The local health department (LHD) receives a request from the local building official for a review pursuant to Va. Code § 32.1-165. See attachment 2a.
 - a. Upon receipt of the request, if unaccompanied by an application from the property owner, LHD must contact the property owner to obtain the owner's permission for review. See attachment 2b.
2. LHD receives an application from the property owner for a review pursuant to Va. Code § 32.1-165. See attachment 2b.
 - a. The request from the building official and the application from the property owner (or agent) provides authority for review pursuant to Va. Code § 32.1-165 and grants permission for staff to enter the property and perform required evaluation.
 - b. If the application is incomplete, staff must deny the application by notifying the owner in writing. The denial must explain the reasons why the application is incomplete and provide an opportunity to appeal. The owner can resubmit a new application at any time. See attachment 5.
 - c. If the request and application indicates a subject structure is not designed for human occupancy, staff should contact the local building official to determine whether the structure is designed for human occupancy. In the event the building official confirms the proposed structure is not designed for human occupancy, staff can use attachment 3b for the response.
3. After receiving the request from the building official, the property owner (or agent) must submit the application (attachment 2b). Staff should complete a review of paper and electronic records within two business days of receiving a complete application. Staff must also request copies of septic tank pumping records or operation and maintenance (O&M) records for the onsite sewage system, if available.
 - a. If the application is complete and does not contain supporting work from a licensed private sector professional, staff must schedule a site visit at a date and time acceptable to the property owner (or agent). As best practice, office support staff should schedule the site visit when the property owner (or agent) submits the completed application to the local health department.
 - b. If the application is complete and contains a certified private sector evaluation as authorized by the Code¹, VDH may perform a field inspection of the private sector

¹ In accordance with Va. Code § 32.1-165, staff may accept certified evaluations from (i) a professional engineer licensed pursuant to Chapter 4 of Title 54.1; (ii) an onsite soil evaluator, onsite sewage system operator, or onsite

work before issuing an approval, but an inspection is not required. Review of private sector work should be consistent with guidelines established in GMP #2015-01, meaning at least 10% of each licensee's work will be evaluated by completing a Level 2 (field) review. Staff is expected to process requests and complete applications within 5 business days of receipt when accompanied by a supporting private sector certified evaluation, unless the property owner (or agent) agrees to a different timeframe. Completion of attachment 3a constitutes a certified evaluation.

For commercial and multi-family dwellings greater than 1,000 gallons per day in design flow, the property owner must submit a certified evaluation from a private sector professional; otherwise, the application is incomplete.

- c. For conventional onsite sewage system requests without supporting work from the private sector, at a minimum, the property owner must uncover the septic tank and distribution box for inspection, unless the property owner requests and receives a waiver from this policy expectation. If the owner believes uncovering the septic tank and distribution box would create a financial or other hardship, the property owner may request an exemption. The property owner or agent can request a waiver from the expectation to uncover system components using the application (see Attachment 2b). If the owner has a licensed private sector professional assist with locating and uncovering the system they can submit a private sector evaluation and as previously mentioned and a VDH site visit may not be needed.

The EH Manager, Supervisor, Technical Consultant or EHS Senior may grant a waiver from uncovering components on a case-by-case basis. Staff may consider an exemption for the following reasons:

1. The owner has O&M records within the past 5 years of the request for a building permit.
2. The owner reports uncovering system components would likely cause damage to system components or would be too costly.
3. The owner has accurate field measurements for the location of the septic tank and distribution box.
4. Other hardships outweigh the benefit of an inspection of the system components.
5. Other facts indicate an inspection of the system components is not necessary (e.g., the sewage system is less than 5 years old; the tank was recently pumped; accurate records exist, etc.).

Prior to the site visit, staff should make reasonable efforts to locate and obtain any previous records for the sewage system. Staff should provide any records found to help the owner locate system components. When a record of approval exists for the

sewage system, that approval and permit remains effective until the system fails or there is a change in effluent flow or strength.

Lack of records does not automatically indicate the sewage system was installed without a permit and should not be used as the sole reason for denying a request pursuant to Va. Code § 32.1-165.

If records for the sewage system are found, staff shall provide those records to the property owner or agent. If the sewage system is more than five years old and the owner has no inspection or septic tank pumping records, staff should recommend the owner pump the septic tank, unless other facts dictate pumping is unnecessary.

4. If the owner uncovers the septic tank and distribution box for inspection, staff shall observe the septic tank and distribution box's condition and recommend repairs or voluntary upgrades using best practices and professional judgment. If a repair is required, staff must notify the owner in writing a repair is required (see attachment 6).
 - a. During the site visit, staff must create an accurate field sketch with "triangulated" measurements to locate system components (see attachment 3) to the extent possible. Staff may, but is not required to, perform a site and soil evaluation to determine the depth to soil-limiting features. All field measurements, soil evaluation observations, and site sketches shall be provided to the owner with the agency's case decision to approve or deny the request.

Using attachment 3a or 3b, depending whether the request is associated with a structure designed for human occupancy, staff must estimate the number and length of percolation trenches and update electronic records in the Virginia Environmental Information System (VENIS) database for the property (see attachment 7).

- b. If prior records document compliance with current regulations for dispersal of septic tank effluent and staff determines (1) the sewage system is not failing,² (2) was installed in accordance with the regulation in effect at the time of its installation, (3) there is no increase in effluent strength or flow, and (4) the sewage system can be expected function properly, then staff shall approve the request as "safe, adequate and proper" (complies with current regulations) using Attachment 3a (for requests associated with human occupancy) or Attachment 3b (for requests not associated with human occupancy).

² 12VAC5-610-350. Failure of a sewage disposal system. For the purpose of requiring correction of a malfunctioning sewage disposal system the presence of raw or partially treated sewage on the ground's surface or in adjacent ditches or waterways or exposure to insects, animals or humans is prima facie evidence of such system failure and is deemed a violation of these regulations. Pollution of the groundwater or backup of sewage into plumbing fixtures may also indicate system failure.

- c. If sufficient information to determine whether the sewage system complies with current regulations is unavailable (i.e., unknown depth to limiting features, unknown depth of system installation, etc.), or where staff determines the sewage system does not comply with current regulations, then staff must approve the request as “non-conforming,” provided (1) the sewage system is not failing, (2) was installed in accordance with the regulation in effect at the time of its installation, (3) there is no increase in effluent strength or flow, and (4) the sewage system can be expected function properly, then staff must approve the request as “safe, adequate and proper” (complies with current regulations) using Attachment 3a (for requests associated with human occupancy) or Attachment 3b (for requests not associated with human occupancy).
 - i. With respect to horizontal separation distances to structures already installed at the time of the site visit (shed, gazebo, sidewalk, playground set, or other landscaping feature over the footprint of the dispersal field), staff must note whether those structures could potentially have a negative impact on the proper function or ability to perform O&M. However, these features would not normally result in a denial (see paragraph 4.d below), and staff could approve the sewage system as “nonconforming” to the current regulations.
 - ii. If staff finds an existing (unpermitted, prior to 1990) well is insufficiently offset from the existing sewage system, staff should note the horizontal separation, and make appropriate recommendations with respect to testing or relocating the drinking water source. Unless a regulatory violation exists (see paragraph 4.d below), then staff may approve the use as nonconforming.
 - iii. A property owner may voluntarily upgrade the sewage system if desired.
- d. If staff determines facts warrant denial of the request for “safe, adequate and proper,” staff must issue a Notice of Alleged Violation (NOAV) accurately describing and explaining why observations indicate the property owner may be violating applicable regulation and law, and provide the property owner with a right to appeal. The owner may file a new application to repair or replace the existing sewage system, or appeal the adverse decision, in accordance with the NOAV and denial for safe, adequate and proper pursuant to Va. Code § 32.1-165.

Upon approval of a repair, staff may provide a copy of the construction permit to the local building official and issue an approval using Attachment 3a or 3b. The property owner may also request the system be evaluated according to current regulations. For systems without documentation, this requires a new site and soil evaluation.

5. For an alternative discharging sewage system or an alternative onsite sewage system (AOSS), the owner should supply the most recent O&M records. If the request is within 12 months of the most recent operator report indicating the system is functioning properly, a

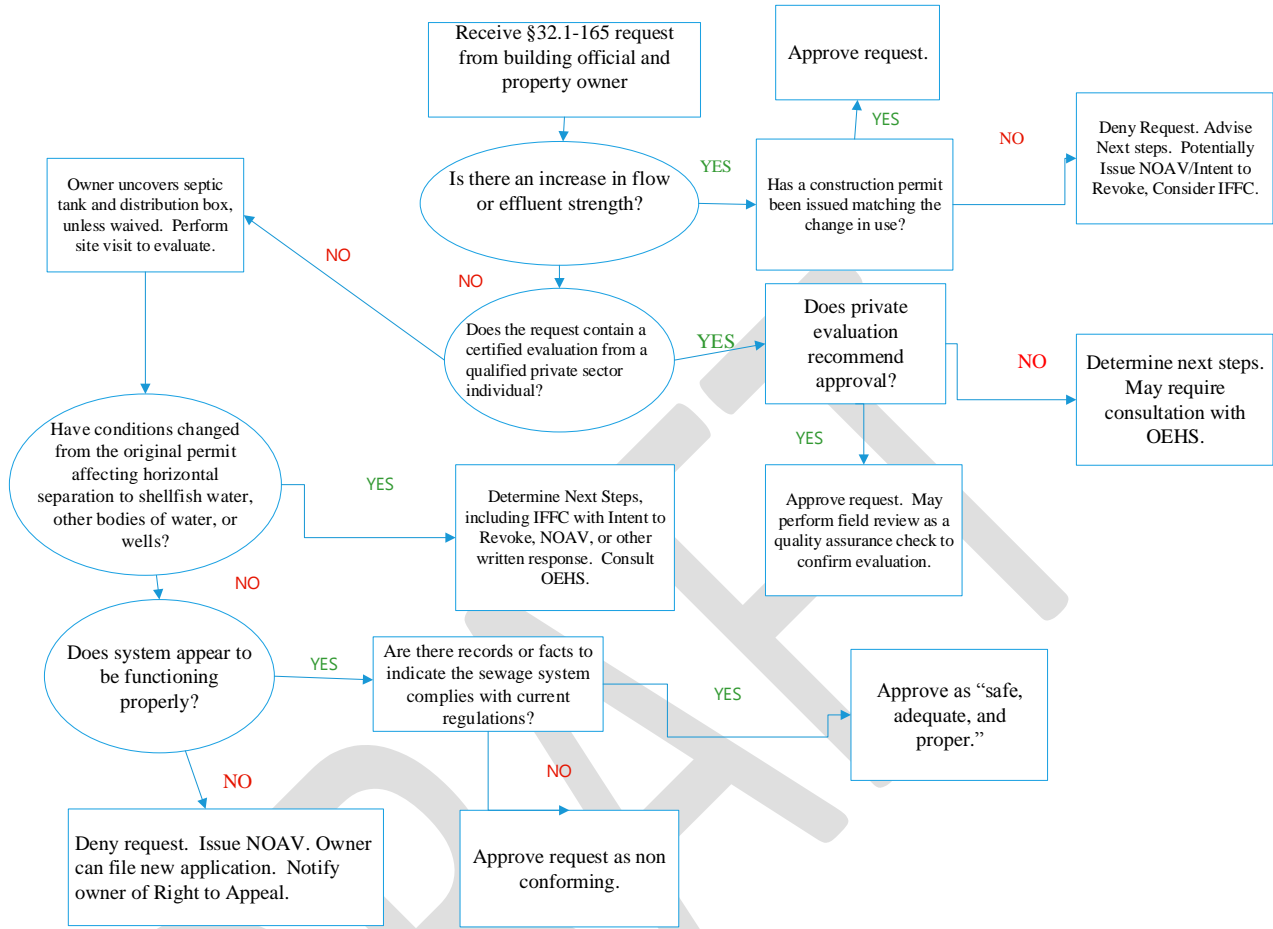
site visit by VDH staff is not necessary. Staff should perform a site visit in accordance with guidelines established in GMP #2015-01, meaning at least 10% of each licensee's work will be evaluated by completing a Level 2 (field) review. Upon review, staff may approve the system, either as "non-conforming," or meeting current regulations, depending on the facts gathered from the files.

If no current operator report for the alternative discharging system or alternative onsite sewage system is available, staff must deny the request and provide the owner with a NOAV.

- Attachment 1 - Flow Chart: SAP Review of an Existing System
- Attachment 2a - Request from local building official
- Attachment 2b - Application from property owner
- Attachment 3a - Evaluation Form (designed for human occupancy)
- Attachment 3b - Evaluation Form (not designed for human occupancy)
- Attachment 4 - Virginia Code § 32.1-165
- Attachment 5 - Denial letter
- Attachment 6 - NOAV letter
- Attachment 7 - Screenshot of data entry requirements for VENIS
- Attachment 8 - MOA between VDHCD and VDH

Attachment 1

Flow Chart: Review of Existing Systems



Attachment 2a: **Application for Health Department Review from Building Official**



Request for Health Department Review

Building/Zoning Department Use Only:

The _____ (County/City) Building and/or Zoning Department hereby requests that the Virginia Department of Health evaluate the onsite sewage system and/or water supply on the property described below to determine whether:

The existing onsite sewage disposal system is safe, adequate and proper (SAP) for the proposed use (see §32.1-165 of the *Code of Virginia*). Note: This block can only be marked if the structure is designed for human occupancy.

The proposed use will encroach upon the existing onsite sewage disposal system and/or water supply.

Other or Comments:

Attachments (sketch, building plans, plat)

Building/Zoning Official Signature: _____

Date: _____

Attachment 2b: Request for Health Department Review
To Be Completed By Property Owner Or Agent:

Owner Name: _____	Home Telephone: _____
Mailing Address: _____	Office Telephone: _____
_____	Cell Phone: _____
e-mail address: _____	
Agent Name: _____	Home Telephone: _____
Mailing Address: _____	Office Telephone: _____
_____	Cell Phone: _____
e-mail address: _____	

Property Location (provide directions from local health department):

Tax Map: _____ PIN # _____
Subdivision Name (if applicable): _____ Lot # _____

Current Use (include # of Bedrooms): _____

Proposed Use (include # of Bedrooms): _____

Please attach any recent records of onsite system (Construction Permits, Pump-outs, or Operation and Maintenance Reports).

Has property been occupied during previous 30 day period: Y or N

The septic tank and distribution box are uncovered for inspection: Y or N Components will be uncovered by _____ (date).

(To prevent potential damage to the system VDH recommends homeowners first contact Miss Utility for marking any underground utilities. The septic tank and distribution box should be carefully excavated by hand.)

Uncovering the septic tank and distribution box would cause an undue hardship: Y or N If Y reasons for hardship:

(Examples of hardship: system is relatively new, recently pumped, accurate records exist, or excavation would likely damage components.)

Related Building Permit #: _____ Health Department I.D.#: _____

PLEASE READ CAREFULLY:

This report is only intended to address the above referenced request and does not address evaluation procedures for sewage systems being sold through real estate transfers, or systems and water supplies being re-used as part of a subdivision process. This document specifically addresses VDH's implementation of § 32.1-165 of the Code of Virginia and is not to be used for any unauthorized use.

Section 1: Please note that each evaluation is based on a case by case basis and may or may not include a Department site visit. There is no guarantee given or implied that this sewage disposal system will continue to function properly in the future. In the event of a sewage disposal malfunction, the owner will be responsible for any repairs or other actions deemed necessary by the Department to correct the situation.

Section 2: There is no guarantee given or implied that the proposed construction will not interfere with any components of the sewage disposal system and/or water supply. The Department is simply performing a courtesy review for the locality to try and identify any potential conflicts based on information available. In the event of damage to a sewage disposal system or well during construction, the owner will be responsible for any repairs or other actions deemed necessary by the Department to correct the situation.

The property boundaries and building locations are clearly marked or identified at the property. I give permission to the Virginia Department of Health to enter the property described, if necessary, for the purpose of processing this application. An accurate sketch of the property, existing structures, wells, sewage disposal systems, and proposed structure(s) is attached.

Owner/Agent Signature: _____ Date: _____

Attachment 3a:

Findings:
Review pursuant to Va. Code § 32.1-165

Name: _____

Phone Number: _____

Subdivision: (If Applicable) _____ Section: _____ Lot: _____

Physical Address: _____

Is the existing onsite sewage system safe, adequate and proper for the proposed use?

(YES) Comments: _____

(NO) Comments: _____

Other Comments:

Turn Document Over for Site Sketch and Signature.

Site Sketch:

DRAFT

SIGNATURE: _____

DATE: _____

An owner may challenge a denial by requesting an Informal Fact-Finding Conference (IFFC) within 30 days of receipt of a decision. All requests for an IFFC must be sent in writing to the District Health Director and cite the reason or reasons for the request.

Attachment 3b: **Findings and Worksheet for a Courtesy Review of Building Plans not designed for Human Occupancy**

Name: _____

Phone Number: _____

Subdivision: (If Applicable) _____ **Section:** _____ **Lot:** _____

Physical Address: _____

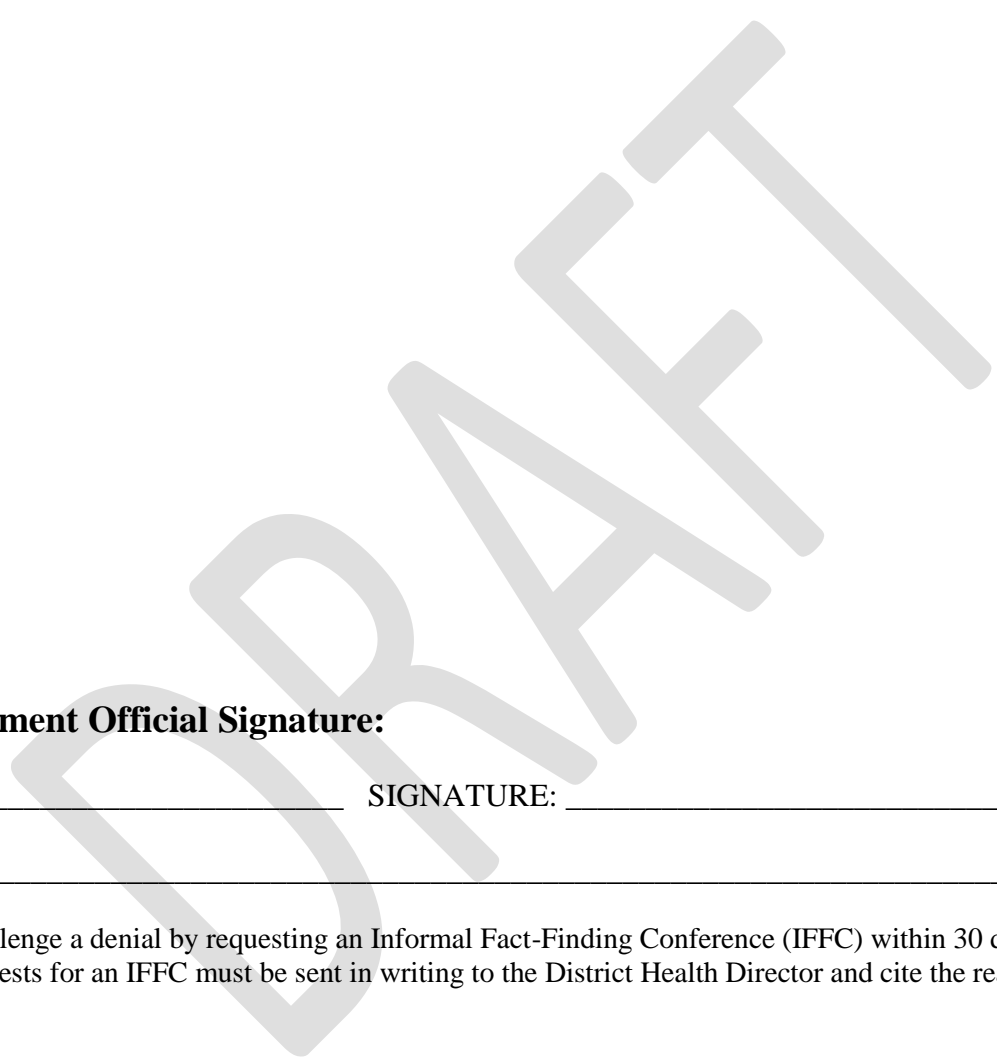
Section 1 Courtesy Review:

For pools, decks, garages, pole barns, sidewalk installations, and other structures not designed for human occupancy, the local building official may ask VDH to determine whether proposed construction will interfere with the existing sewage system's function. For these situations, VDH lacks authority to determine whether the sewage system is safe, adequate, and proper as contemplated by the Code. However, as a courtesy to the building official, and by request (see attachments 2a and 2b), VDH may process the request.

Comments: _____

Turn Document Over for Site Sketch and Signature.

Site Sketch:



Health Department Official Signature:

NAME: _____ SIGNATURE: _____

DATE: _____

An owner may challenge a denial by requesting an Informal Fact-Finding Conference (IFFC) within 30 days of receipt of a decision. All requests for an IFFC must be sent in writing to the District Health Director and cite the reason or reasons for the request.

Attachment 4: **Copy of Va. Code § 32.1-165**

“§ **32.1-165**. Prior approval required before issuance of building permit; approved sewage system or nonconforming system.

- A. No county, city, town, or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon finding that safe, adequate, and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of such permit has been approved by the Review Board. "Safe, adequate, and proper" means a treatment works that complies with applicable regulations of the Board of Health that are in effect at the time of application.
- B. The Commissioner shall develop an application and procedure for evaluating an installed treatment works and to determine whether to authorize issuance of a permit for a building designed for human occupancy.
- C. Nothing in this section shall be construed to prevent the Commissioner or his agent from approving the use of a nonconforming treatment works, provided the treatment works was installed in accordance with the Board of Health's applicable regulations in effect at the time of its installation, is not failing, and is designed and constructed for the sewage flow and strength expected from the building.
- D. Nothing in this section shall be construed to prevent an owner of real property from receiving a voluntary upgrade pursuant to § **32.1-164.1:3**, or other permit, as a condition of approval as a nonconforming treatment works.
- E. The Board, Commissioner, and Department may accept a certified evaluation from (i) a professional engineer licensed pursuant to Chapter 4 of Title 54.1; (ii) an onsite soil evaluator, onsite sewage system operator, or onsite sewage system installer licensed pursuant to Chapter 23 of Title 54.1; (iii) or other individual with an appropriate certification from the National Sanitation Foundation, or equivalent. The Department may perform an inspection of the certified evaluation but shall not be required to perform a field check prior to the issuance of the written authorization in subsection A.”

Attachment 5:

Denial Letter

Page 1 of 2

<LHD address>

<Date>

<owner>
<owner address>

Certified Mail _____

RE: <property address>

Dear <owner>:

This letter is to inform you that _____ has evaluated your request for a Safe, Adequate, and Proper (SAP) review pursuant to Va. Code § 32.1-165 filed on _____. Unfortunately, we are not able to approve the request for the following reason(s):

{INSERT REASONS, i.e.,

The onsite system is not designed for the expected flows.
The proposed building plan does not meet setback requirements for the septic system.
The existing onsite system appears to be failing. }

This decision is based on the information filed with your application and the request from the local building official. You have the right to appeal this decision. If you wish to appeal, you can submit your request to _____ at _____ within **thirty (30) days** from the date you receive this letter. Please include any facts or other data that would support your appeal.

If you have any questions or if this office may be of further service, please let us know.

Sincerely,

Environmental Health Specialist

CC: Building Official

Attachment 6: **Draft NOAV Letter**

COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF HEALTH
<LHD address>
<Today>

NOTICE OF ALLEGED VIOLATION

<OwnerName>
<OwnerMailingAddress>
<OwnerMailingCity>, <OwnerMailingState> <OwnerMailingZip>

Re: (Physical Address, Location, Lot#, Tax Map #, ect)

Certified Mail

Dear <OwnerName>:

This Notice is to inform you that the<FacilityLocationCountry> County Health Department ("local health department") has observed certain conditions on your property that may constitute threats to public health and the environment. The following observations form the basis for the issuance of this notice:

On (**insert date**), _____, Environmental Health Specialist with the local health department conducted an inspection of your sewage treatment system ("system") VAG _____. The inspection revealed:

- The system appeared to discharge untreated or partially treated sewage effluent into the waters of the Commonwealth and not operating in accordance with the effluent limitation set forth in your general permit.
- Aerator appeared to not be functioning properly.
- Aerator missing.
- No disinfectant tablets were provided in the chlorinator.
- etc.
- Your current operation permit appears to have expired on _____.
- It appears that a valid monitoring contract is not provided.
- It appears that a valid maintenance contract is not provided.
- The local health department has not received required monitoring and maintenance reports.

These observations, if verified, constitute real or potential threats to public health and to the ground and surface waters of the Commonwealth.

This notice is to remind you that it is your responsibility, as owner of your property, to operate the facilities in accordance with the applicable laws and regulations of the State Board of Health ("Board"). The Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq., the "*Regulations*") and the Alternative Discharging Sewage Treatment Regulations for Individual

Single Family Dwellings Regulations (12 VAC 5-640-20 et seq., "Discharging Regulations") which contain the following provisions:

12 VAC 5-610-80. Sewerage systems and/or treatment works required.

A. The discharge of untreated sewage onto the land or into the waters of the Commonwealth is prohibited.

B. No owner, person, or occupant shall discharge treated or untreated sewage onto the land, into the soil or into the waters of the Commonwealth without a valid permit from the commissioner or, as appropriate, a certificate issued by the Department of Environmental Quality in accordance with Title 62.1 of the Code of Virginia.

C. All buildings, residences, and structures designed for human occupancy, employment or habitation and other places where humans congregate shall be served by an approved sewerage system and/or treatment works. An approved sewerage system or treatment works is a system for which a certificate to operate has been issued jointly by the department and the Department of Environmental Quality or a system which has been issued a separate permit by the commissioner.

12 VAC 5-610-350. Failure of a sewage disposal system. *For the purpose of requiring correction of a malfunctioning sewage disposal system the presence of raw or partially treated sewage on the ground's surface or in the adjacent ditches or waterways or exposure to insects, animals or humans is prima facie evidence of such system failure and is deemed a violation of these regulations. pollution of the groundwater or backup of sewage into plumbing fixtures may also indicate system failure.*

12 VAC 5-640-430.A. Performance requirements. Discharge limits. *All systems operated under this chapter shall meet the effluent limitations set forth by the State Water Control Board in the General Permit.*

12 VAC 5-640-220.B. Permits; general. *Operation permit required. Except as provided in 12 VAC 5-640-310, no person shall place a discharging system in operation, or cause or allow a discharging system to be placed in operation, without obtaining a written operation permit.*

12 VAC 5-640-220.D. Permits; general. *Operation permit validity. Except as provided for in 12 VAC 5-640-280, operation permits shall be valid for a period of time not longer than the General Permit and the maintenance contract required pursuant to 12 VAC 5-640-500 B or the monitoring contract required pursuant to 12 VAC 5-640-490 F, whichever expires first. The operation permit may be renewed upon written proof of a new or renewed maintenance contract or monitoring contract provided they are all valid for not less than 24 months. The period of renewal shall coincide with the expiration date of the document with the shortest period of validity.*

12 VAC 5-640-490.A. Monitoring. General. *Discharging systems that discharge improperly treated effluent can endanger public health and threaten environmental resources. All discharging systems shall be routinely inspected and the effluent sampled to determine compliance with the*

effluent limitations set forth by the State Water Control Board in the General Permit. All testing requirements contained in this chapter are the responsibility of the system owner to have collected, analyzed, and reported to the department.

12 VAC 5-640-490.F. Monitoring. *Monitoring contract. In order to assure monitoring is performed in a timely and competent fashion, the owner of each system shall have a contract for the performance of all mandated sampling with a person capable of performing the sampling and analysis of the samples. This requirement may be met by including the performance of all testing and monitoring as part of the maintenance contract in accordance with 12 VAC 5-640-500 C 1. Failure to obtain or renew a monitoring contract shall result in the suspension or revocation of the operation permit as described in 12 VAC 5-640-280. When the district health director or the sanitarian manager find that the homeowner is capable of collecting and transporting samples to an approved laboratory in compliance with this chapter, the requirement for having a valid monitoring contract may be waived. Waiving of this requirement shall be done only on an individual basis and shall reflect the competency of the individual based on professional, training, or other educational experience. In the event the individual for whom this section is waived fails to collect three or more of any of the required samples in any five-year period, the district sanitarian or the health director may reinstate the requirement for a monitoring contract.*

12 VAC 5-640-500.A. Maintenance. *General. Due to the potential for degrading surface water and ground water quality or jeopardizing the public health, or both, routine maintenance of discharging systems is required. In order to assure maintenance is performed in a timely manner a maintenance contract between the permit holder and a person capable of performing maintenance is required.*

12 VAC 5-640-500.B. Maintenance. *Maintenance contract. A maintenance contract shall be kept in force at all times. Failure to obtain or renew a maintenance contract shall result in the suspension or revocation of the operation permit as described in 12 VAC 5-640-280. The operation permit holder shall be responsible for ensuring that the local health department has a current copy of a valid maintenance agreement. When a maintenance contract expires or is canceled or voided, by any party to the contract, the owner shall report the occurrence to the local health department within 10 work days.*

12 VAC 5-640-510. Information to be reported.

A. Who is responsible for reporting. All owners issued an operation permit for a discharging system are responsible for reporting the results of all mandated testing to the department.

B. What must be reported. All formal compliance testing, informal testing, repairs, modifications, alterations, expansions and routine maintenance must be reported.

C. When reports are due. All reports and test results must be submitted within 15 working days of the sample collection.

D. Where to report results. All reports and test results shall be submitted to the local or district

office of the health department. When formal testing indicates a discharge limit established in the General Permit is being exceeded or when informal testing indicates a discharging system may be in violation of the General Permit requirements, the maintenance provider shall be notified by the owner within 24 hours.

12 VAC 5-640-520. Failure to submit information. *Failure to conduct mandatory monitoring or to report monitoring results as required in 12 VAC 5-640-490 and 12 VAC 5-640-510 may result in the suspension or revocation of the owner's operation permit.*

Violations of the Regulations and Discharging Regulations may result in enforcement actions provided under Title 32.1 of the *Code of Virginia*.

The local health department recommends that you take the following steps within the timeframes described to mitigate the effects of potential sewage discharge:

Immediately cease discharging untreated or partially treated sewage onto the ground or water of the Commonwealth.

Immediately contract with an individual who holds a valid Sewage Handling Permit from the Virginia Department of Health to pump and haul out the sewage system and dispose of the contents on an emergency basis in accordance with section 12 VAC 5-610-599.1 of the *Regulations*.

Immediately treat the ground surface that has been exposed to raw or partially treated sewage with a layer of lime in order to destroy any remaining pathogenic microorganisms and to reduce odors.

I should advise you that, while the Virginia Department of Health ("VDH") and the State Health Commissioner ("Commissioner") has not made a decision on whether to initiate enforcement action against you at this time, your failure to institute the recommendations above may affect further investigation and potential enforcement by the Commissioner and VDH.

This notice sets forth the local health department's observations and recommendations, but it is not a case decision as defined in §2.2-4001 of the *Code of Virginia*. If you have additional facts that you believe bear on this situation and you would like to schedule an informal-fact finding conference pursuant to §2.2-4019 of the *Code of Virginia*, please contact <manager>, Environmental Health Manager at <phone number> within fifteen (15) days of the receipt of this notice.

Sincerely,

<EHS>

Environmental Health Specialist

CC: <FacilityLocationCountry> County Commonwealth Attorney
<Director>Director Health District
<Manager>Environmental Health Manager

Section 599.1 of the *Regulations* provides that VDH may authorize pumping and hauling on an emergency basis for a definite period of time. Emergency pump and haul is not an “approved” sewage system but is intended to be an intermediate action to prevent serious threats to public health and environment until an owner secures proper permits, etc. for a repair or replacement system and installs that system (i.e., an approved system).

DRAFT

Attachment 7: Screenshot data entry requirements for VENIS updates

Existing System Evaluation

Evaluation Information

System Name: A new test	EHS Catherine W. Cummins		
Evaluation Requested Date 16	Evaluation Date 09-May-2016 16	Reason for Evaluation	
Next Visit Date 16			
Comments			

Site and Building Information

Designed Building Use Residential	Observed Building Use	Is Property currently occupied?	Lot Size
Designed Number of Bedrooms		Structure Designed for Human Occupancy	Owner Affidavit Provided
Record of System on File	System Installed Legally	Complies with Current Regulations	
Drawing Import Drawing			
Comments Add Canned Comment			

Sewage System Information

Installed Date 16	Last Pumpout 16	Sewage System Permit Number	Septic Type
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Attachment 8:

DRAFT

MEMORANDUM OF AGREEMENT

June 27, 2013

Between the Virginia Department of Housing and Community Development (VDHCD)
and the Virginia Department of Health (VDH)

In accordance with Va. Code §§ 36-98 et seq., 32.1-12, and 32.1-163 et seq., the VDH and the VDHCD agree to coordinate their jurisdictional responsibilities set forth in the Virginia Uniform Statewide Building Code (13 VAC 5-62, the "building code") and applicable VDH regulations ("VDH regulations")¹ as follows:

Codes and Regulations: Adoption and Enforcement

1. VDHCD adopts and promulgates the building code. The local jurisdiction's building department enforces the building code.
2. The Board of Health adopts and promulgates VDH regulations. The Board of Health and VDH jointly enforce VDH regulations.

Definitions:

"Alternative Discharging System" means a treatment works that requires a permit from VDH pursuant to 12 VAC5-640.

"Onsite Sewage System" means a conventional or alternative onsite sewage system as defined in Va. Code § 32.1-163, which requires a permit from VDH pursuant to 12 VAC5-610 or 12 VAC5-613.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

"Graywater system" means a treatment works that disperses untreated wastewater from bathtubs, showers, lavatory fixtures, wash basins, washing machines, and laundry tubs. A graywater system does not include wastewater from toilets, urinals, kitchen sinks, dishwashers, or laundry water from soiled diapers.

¹ VDH implements the Sewage Handling and Disposal Regulations (12 VAC 5-610); Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12 VAC 5-640); Regulations for Alternative Onsite Sewage systems (12 VAC5-613); and Private Well Regulations (12 VAC5-630).

Treatment works applicability

1. The VDHCD and VDH agree on the following interpretation of their relevant regulations: The building code will apply to all internal service plumbing components of a treatment works up to the point of connection of the building drain to the building sewer.
2. The building code will apply to electrical and structural components of a treatment works, except as provided below.
 - a. The VDH regulations will apply to control panels for the treatment works and its functional treatment components, including electrical devices for pump stations, master disconnect switches, manual override switches, motor control panels, and separate motor control centers when specified by the designer or required by VDH.
 - b. VDH regulations and policies do not consider cord and plug connections associated with a treatment works. If allowed by the building code, cord and plug connections for the treatment works must be located in a weather proof box when outside of the wet well to prevent exposure to weather conditions.
3. The VDH regulations will apply to the treatment and functional components of a treatment works regardless of location (inside or outside of the building or structure), except as provided below.
 - a. The building code will apply to graywater systems not regulated by VDH, such as buildings or structures connected to a public sewer system.
4. The VDH regulations will apply to components of a treatment works that are external to the building or structure. External components include the septic tank, pump station, distribution box or mechanism, piping, or additional treatment devices such as blowers and associated electrical devices.

Reviews pursuant to Va. Code § 32.1-165

The VDHCD and VDH commit to ensure no county, city, town or employee thereof shall issue a building permit for the construction of a new building designed for human occupancy without the prior written notification of the State Health Commissioner or the Commissioner's designated agent that safe, adequate, and proper sewage treatment is or will be made available to such building.

1. VDH approves a treatment works three ways; by issuing: (1) a certification letter that recognizes a treatment works can be designed sometime in the future, which does not expire; (2) a subdivision letter that describes future treatment works for each subdivision lot, which also does not expire; or (3) a construction permit,

which describes the actual construction of the treatment works and is valid for 18 months with one 18 month renewal under certain conditions.

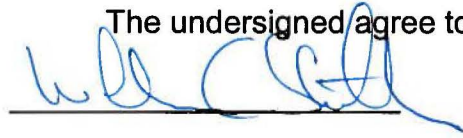
2. **Pursuant to Va. Code § 32.1-165**, the local building official may use the certification letter, subdivision letter, or construction permit to issue a building permit. The local building official understands that a treatment works cannot be constructed until the local health department issues a construction permit. The footprint of the building or structure cannot interfere with the setbacks required by the VDH regulations.
3. **Pursuant to Va. Code § 32.1-165**, the local building official will contact the local health department as provided by local and routine processes, which might differ in various jurisdictions, upon finding that issuance of the building permit might have an impact on the function of an existing treatment works already installed. If VDH requests an application for review of the installed treatment works, then the application must be completed before VDH can determine whether the treatment works is acceptable.
 - a. If the wastewater flow, capacity, or effluent strength increases for the existing treatment works, then **pursuant to Va. Code § 32.1-165**, the building official must rely on a valid construction permit from VDH before issuing the building permit. A certification letter or subdivision approval will not be sufficient.
4. VDH will only approve a treatment works if it complies with VDH regulations and associated policies. VDH will notify the local building official as soon as practical whether a treatment works was installed correctly, by issuance of an operation permit. **Pursuant to Va. Code § 32.1-165**, the local building official will not issue a certificate of occupancy until after VDH has issued the operation permit.

Conflict Resolution

Both VDH and VDHCD will cooperate in resolving any technical conflicts between VDH regulations and the building code. The agencies will develop and implement procedures as needed to ensure collaboration between local building officials and local health departments. Appropriate amendments, edits, additions, or deletions will be made to the VDH regulations and the building code when necessary. This MOA is a statement of the intentions of VDHCD and VDH to coordinate their efforts in order to carry out their statutory duties. It is not a contract and it is not enforceable in any judicial or administrative forum: it does not create any rights or duties of any third party. It does not purport to modify the statutory duty of either signatory agency.

This Agreement is effective as of the date written above and is in effect until terminated either by mutual written consent of the parties or by one signatory party with 60 days' written notice to the other party. This Agreement may be amended by mutual written consent of the parties.

The undersigned agree to the Conditions of this Agreement.



William, C. Shelton, Director
Department of Housing and
Community Development



Cynthia Romero, MD, FAAFP
State Health Commissioner
Department of Health

May XX, 2017

TO: District Health Directors and Environmental Health Managers

THROUGH: Marissa J. Levine, MD, MPH, FAAFP
State Health Commissioner

THROUGH: Allen L. Knapp, Director
Office of Environmental Health Services

FROM: Dwayne Roadcap, Director
Division of Onsite Sewage, Water Services, Environmental Engineering
and Marina Programs

SUBJECT: GUIDANCE MEMORANDA AND POLICY 2017-03

Introduction

GMP-2017-03 revises and combines GMP 2004-01 (GMP-128) and GMP 2011-02 (GMP-155). **GMP 2004-01 and GMP 2011-02 are hereby rescinded.**

Purpose

The purpose of this policy is to (1) aid staff in correctly identifying permit applications as voluntary upgrade or repair permit applications; (2) clarify what type of voluntary upgrade or repair activities require full compliance with the State's regulations; (3) identify when a permit application may require a treatment waiver under the Code of Virginia; and (4) provide staff with a clear process for issuing treatment waivers.

Definitions (From 12VAC5-620)

"Voluntary upgrade" means an improvement to an existing onsite sewage disposal system or alternative discharging system that (i) is not required for compliance with any law or

regulation and (ii) results in no net increase in the permitted volume or strength of sewage dispersed by the system.

"Repair" means the construction or replacement of all or parts of a sewage disposal system or private well to correct a failing, damaged, or improperly functioning system or well when such construction or replacement is required by the board's regulations.

Legislative Background

The 2004 General Assembly passed House Bill 930 (Acts of Assembly, Chapter 916, 2004) which amended § 32.1-164.1:1 of the Code of Virginia (Code). GMP 2004-1 (GMP-128) outlined procedures for processing applications for repair permits pursuant to Code § 32.1-164.1:1.B and 12VAC5-610-280.C.2. Waivers to treatment and pressure dosing were made available to owners repairing failing sewage systems. Legislation approved in 2011 (Acts of Assembly, CH. 394) amended and reenacted Code § 32.1-164.1:1 and added Code § 32.1-164.1:3, which governs permits for voluntary system upgrades. Permits issued pursuant to Code § 32.1-164.1:3 are subject to the provisions of Code § 32.1-164.1:1. Waivers issued by the Virginia Department of Health (VDH) pursuant to these Code sections must be recorded in the land records of the jurisdictional circuit court. GMP 2011-02 (GMP-155) outlined procedures for issuing voluntary upgrade permits. Waivers to treatment and pressure dosing were made available to owners electing to upgrade non-failing sewage systems. Legislation approved in 2015 (Acts of Assembly, CH. 111) amended and reenacted Code § 32.1-164.1:1. Waivers for voluntary upgrades were made available to owners who received repair waivers between July 1, 2004, and December 6, 2011. GMP-2017-03 outlines procedures for issuing repair permits and voluntary upgrade permits in accordance with Code §§ 32.1-164.1:1 and 32.1-164.1:3, respectively. In addition to treatment waivers for reductions in biochemical oxygen demand (BOD₅), total suspended solids (TSS), and pathogens, treatment waivers may also be used for requirements to reduce nitrogen.

General – Existing System Evaluations

In order to ascertain whether a system requires a repair or a voluntary upgrade, the designer must conduct a systematic and consistent evaluation of the onsite wastewater treatment system. For repairs and voluntary upgrades, the designer must complete the Existing System Evaluation Form (see GMP 2017-02).

The basic steps are:

1. Document the file information regarding the owner, the site, and the system description
2. Document the current use and current condition.
3. Make final recommendations for repair or voluntary upgrade based on the assessment.

Typically each system component is located and examined. The potential exception to this is if the system has been recently inspected, a recent operation and maintenance (O&M) record is on file, and/or an obvious event occurred that damaged a component. A soil evaluation is needed if:

1. The drainfield is showing signs of stress or is failing;
2. An increase in treatment level is proposed;
3. A modification to the drainfield is proposed such as moving or adding trenches; or
4. An expansion is proposed.

General – Repair Permits

Repair permits are issued when either a system is failing pursuant to 12 VAC5-610-350 (Failure of a sewage disposal system: *Sewage Handling and Disposal Regulations* 12VAC5-610-10 et seq., as amended July 1, 2000 (SHDR)), or when required to restore the system to normal function as defined in the construction and operation permit pursuant to 12VAC5-610-340 (Issuance of the operation permit). A Notice of Alleged Violation (NOAV) should always be associated with a repair permit. If the activity is not required and an NOAV is not appropriate, then a repair permit is not appropriate. When a repair permit is issued prior to a NOAV being issued, then the NOAV format found in Attachment 1 is appropriate which acknowledges the owner's willingness to initiate the repair. Proactive replacement, not required by the Department, of existing components with like components may qualify as a voluntary upgrade if the system is still functioning as designed. Owners who receive repair permits may qualify for waivers from the SHDR and the *Regulations for Alternative Onsite Sewage Systems* (AOSS Regulations) (12VAC5-613-10 et seq., effective December 7, 2011) collectively, the "Regulations". See Attachment 2 to determine the type of system repair that triggers compliance with current regulations. Not all repair determinations are straight forward, and occasionally distinguishing between a repair and a voluntary upgrade requires an investigation of both department records and a system evaluation. Completing the Existing System Evaluation form will aid in this determination (See GMP 2017-02). See GMP 2016-02 (Fee Regulations Implementing Policy) for additional guidance on identifying the appropriate permit type. The Process Flow Charts in Attachment 3 will also aid in determining the appropriate permit type and the associated process.

Section 32.1-164.1:1.B of the Code offers financial relief (a waiver) to the current owner of a property whose onsite system is failing, and a repair includes new requirements for additional treatment, pressure dosing, or both, provided the sewage system is on or serves real property consisting of not less than one nor more than four dwelling units. The waiver is not available to commercial sites or sites with more than four dwellings. In practical terms, a system originally permitted to disperse treated effluent (advanced treatment beyond a conventional system), as opposed to septic tank effluent, must be repaired using similarly advanced treatment. The owner of such a system is ineligible for a waiver from the same *treatment* requirements of the Regulations. That owner, however, would be eligible for a waiver from additional treatment requirements or pressure dosing, as long as the original permit did not require pressure dosing. The obverse applies to a system originally permitted for pressure dosing - the owner is ineligible for a waiver from pressure dosing. Finally, an owner with a system originally permitted for both pressure dosing and advanced treatment may be ineligible for a waiver, dependent upon the level of treatment originally required.

A qualified owner may request a waiver and the State Health Commissioner shall grant same unless the Commissioner finds “the failing system was installed illegally without a permit.” Except as provided in Code § 32.1-164.1:1.C, repair waivers shall not be transferable and shall be null and void upon transfer or sale of the property on which the onsite sewage system is located. Additional treatment or pressure dosing requirements shall be imposed when the waiver through transfer or sale of the property is rendered null and void. To obtain a new operating permit, the new owner must comply with the waived regulatory requirements, as well as any subsequent requirements imposed since recordation of the waiver.

An owner must submit an application for a repair permit. No fee is required.

Any owner who receives a waiver must record the waiver in the land records of the clerk of the jurisdictional circuit court.

Historically, 12VAC5-610-280.C.2 of the SHDR provided the district health director or environmental health manager discretion, in cases of economic hardship, to waive the requirement for pre-treating effluent in the case of a construction permit for repair. The Code changes eliminate this discretion. This policy shall be used in lieu of 12VAC5-610-280.C.2 when processing an application to repair a failing sewage system, as Code § 32.1-164.1:1 specifically authorizes VDH to waive certain regulatory requirements when addressing failing onsite systems. An exception for site and design items not covered by the waiver may be granted in accordance with 12VAC5-610-280.C.2.

To ensure the Commissioner provides the financial relief intended by law, VDH personnel will continue to design, to the extent possible, regulatory compliant, gravity-flow or simple pump septic tank effluent systems if requested by the owner. This policy shall not be construed as imposing any obligation on VDH staff to provide consulting services, minimize or maximize an owner’s financial liability, or guarantee any system designed and permitted by VDH will function for a specified period of time. All stakeholders must understand that systems designed with a waiver under Code § 32.1-164.1:1.B do not comply with the regulatory requirements for new construction, nor do those designs meet the industry’s current expectations for system designs. The owner is responsible for determining whether he is best served with a repaired system in accordance with Code § 32.1-164.1:1.B and this policy, or adhere to new construction standards for onsite systems.

Procedures - Repair

The responsible Environmental Health Specialist (EHS) will determine whether an owner qualifies for a waiver under § 32.1-164.1:1.B as part of the routine processing of a repair application, in consultation with an Environmental Health Specialist Senior (EHSS).

For bare applications, Attachment #4 is a letter notifying the owner of the requirement(s) for additional treatment and/or pressure dosing, if applicable, and opportunity to request a waiver to those requirements. This letter should be sent to the owner after receipt of a bare application. This suggested letter should be applicable to the majority of cases local health departments

resolve, but should not be sent when an application is received with supporting private sector documentation.

Prior to sending a letter by certified mail notifying an owner he is eligible for a waiver, the EHS must determine whether the failing system was installed illegally without a permit. If the EHS finds substantial evidence indicating the system was installed illegally without a permit, he should immediately inform the appropriate VDH supervisory personnel to initiate enforcement proceedings. As mentioned earlier, such determinations are not always straightforward and occasionally require a vigorous investigation, including document review and a site and soil evaluation. The letter in Attachment #4 does not apply to systems installed illegally without a permit.

The responsible EHS should make reasonable efforts to educate owners about the public health and environmental benefits of advanced treatment and/or pressure dosing, and also the possible benefits of going to the private sector for design and financial consultation. Such reasonable efforts to inform the owner must not, however, unnecessarily delay owners from obtaining a permit to construct a repair. VDH staff shall not advise owners whether to request a waiver; but only provide information as to the option. Staff should encourage owners to seek advice from private advisors such as attorneys, designers, or real estate professionals.

An owner seeking a repair waiver must return the properly executed waiver request and agreement found in Attachment #5. When properly executed by the owner, Attachment #6 constitutes the request for waiver and the waiver itself. The waiver must be properly executed before a construction permit is released. When the owner produces written proof (certification) he recorded the waiver in the land records in accordance with Code § 32.1-164.1.B, VDH will issue the construction permit.

An owner may receive multiple repair permits under a waiver until the waiver is null and void upon transfer or sale of the property. Owners granted a repair permit for a failing system with a waiver are ineligible for a voluntary upgrade permit, since the system does not meet current requirements (i.e. failing). An owner may, at any time, bring a system into full compliance by completing repairs originally waived and complying with any additional regulatory requirements promulgated by VDH since the date of waiver recordation.

Exception:

Any owner who (a) obtained a waiver to repair a failing onsite sewage system pursuant to Code § 32.1-164.1:1.B on or between July 1, 2004, and December 6, 2011, (b) completed such repair, and (c) desires to voluntarily upgrade the system, may request, and shall receive, a voluntary upgrade waiver in accordance with Code §§ 32.1-164.1:1 and 32.1-164.1:3. Any such waiver shall be recorded in the land records of the clerk of the circuit court in the jurisdiction where the onsite sewage system is located and shall supersede any prior waiver recorded pursuant to Code § 32.1-164.1:1.B.

Responsibility and authority for implementing Code § 32.1-164.1:1.B is hereby delegated to the district environmental health manager and/or the environmental health supervisor.

General – Voluntary Upgrade Permits

Owners of onsite and alternative discharging sewage systems may also upgrade those systems operating as designed and not failing. Requests to voluntarily upgrade typically arise during real estate transactions when a private inspector indicates an existing sewage system is not performing optimally, an individual component exhibits signs of wear, or when an owner desires to enhance the performance or extend the life of a system. Historically, VDH was unable to issue permits to many owners as site conditions did not meet the minimum regulatory requirements and the repair clauses of controlling regulations were inapplicable; as by definition, the systems did not fail. The change to the Code allows VDH to issue construction permits for voluntary upgrades of non-failing, functioning systems using the same rules already in place for failing systems. See GMP 2016-02 for additional examples and discussion of voluntary upgrades. The Process Flow Charts in Attachment 3 will also aid in distinguishing between repairs and voluntary upgrade applications.

Under Code § 32.1-164.1:3, a voluntary upgrade must conform to the laws and regulations for repairing failing systems and requires compliance with current regulations. Where compliance with the Regulations would require the use of additional treatment or pressure dosing not required by the original construction permit, the property owner may request a waiver from additional treatment and/or pressure dosing provided the sewage system is on or serves real property consisting of not less than one nor more than four dwelling units. Upon request, the Commissioner shall grant a waiver if these requirements are met unless the system was installed illegally without a permit. Unlike waivers granted to repair failing onsite sewage systems, waivers granted for voluntary upgrades are fully transferable upon sale of the property. All voluntary upgrades must be for the purposes of reducing threats to public health or to ground and surface waters. Proactive replacement of system components reduces threats to public health or to ground and surface waters. See Attachment 2, to identify voluntary upgrade construction permits eligible for a waiver to current regulations.

Applicability for Voluntary Upgrades Permits

This policy section provides guidance for VDH staff and the public for implementing the provisions of Title 32.1 regarding voluntary upgrades of onsite and alternative discharging sewage systems. This policy applies to the voluntary upgrade of any legally installed onsite sewage disposal system or alternative discharging sewage system that is **not failing**. Upgrades shall be for the purposes of reducing threats to public health or to ground and surface waters. VDH personnel must review voluntary upgrade applications mindful of the considerations below:

- An owner may receive multiple voluntary upgrade permits under a waiver until the waiver becomes null and void upon system failure.
- Owners who receive a voluntary upgrade waiver are eligible for a repair waiver in the event

of system failure.

- Existing dwellings may or may not be occupied.
- There shall be no proposed increase in flow or strength of sewage from that currently permitted. Any increase in sewage flow or strength requires the owner to modify an existing system, thereby making it ineligible for a permit under the voluntary upgrade statute.
- System modifications or upgrades required *for any reason*, including building expansions, replacement of faulty components, returning the system to function as designed, and the repair of failing systems are involuntary and are ineligible for a voluntary upgrade construction permit.
- Voluntary upgrade permits cannot be used as a means to approve new construction activities. Voluntary upgrade decisions are independent and do not commit VDH to future decisions concerning sewage system approvals.
- Owners who request conditional permits to limit occupancy, reduce flow, etc. are proposing changes to their dwellings (not simply upgrading their sewage systems); therefore, the proposals are not voluntary (require a conditional permit and permit fee) and are ineligible for voluntary upgrade permits.
- All applications for voluntary upgrade permits must include an Existing System Evaluation of the system components using the form in GMP 2017-02. All bare applications for voluntary upgrades require a site visit by an EHS to ensure compliance with the statute and to complete an Existing System Evaluation form. The site visit may range from a drainfield walk-over and consultation with the owner or owner's agent, to a full level II review depending on the nature of the proposed upgrade. This procedure is to ensure the system is not failing, was not installed illegally, the proposed activity is not required by law, and the proposed system modification or construction qualifies for a voluntary upgrade permit. Applications for voluntary upgrade permits with supporting documentation from private designers must include a completed existing system evaluation form. An EHS should conduct a site visit for a voluntary upgrade application from a private designer when a new or modified drainfield is proposed. For other proposals, the EHS may use their discretion, depending on the completeness of the supporting documentation.
- Proposals to relocate remote drainfields to the owner's property or a different site are not automatically voluntary upgrades; and are generally new construction. The Code requires a voluntary upgrade design to be for the purposes of reducing threats to the public health or to ground and surface waters. If the current site and system design meet the regulations to a greater extent than a new site with a design that includes a treatment or pressure dosing waiver, the waived design on the new site may not reduce threats to public health or to ground water. On the other hand, a design with treatment, pressure dosing, shallow

placement, etc. may reduce threats, as would a new drainfield site with significantly better soils for treating and dispersing effluent. The answer is design dependent and requires in depth evaluation. Merely relocating a system to another site does not necessarily reduce threats to public health or to ground and surface waters and as a result, may be ineligible for a voluntary upgrade permit.

- Owners electing to upgrade their onsite or alternative discharging sewage disposal systems that are on or serve real property consisting of more than four dwelling units or commercial establishments may receive a voluntary upgrade permit. Waivers for treatment or pressure dosing are not applicable.

Procedures – Voluntary Upgrade Permits

VDH accepts applications and designs for voluntary upgrades of onsite and alternative discharging sewage disposal systems. **Bare applications must include a description of the nature of the voluntary upgrade requested.** Application fees are waived following 12VAC5-620-80.C and GMP 2016-02. Applications will be reviewed following current VDH policy. . Voluntary upgrade applications may be granted an exception for site and design items not covered by the waiver in accordance with 12VAC5-610-280.C.2. Substantial compliance is required concerning setback distances to shellfish waters and drinking water wells unless the existing sewage system is already closer, in which case the upgraded system shall not be closer than the existing system. In determining whether a proposed upgrade complies with 12VAC5-280.C.2 (i.e. complies to the greatest extent possible) it is acceptable to include the existing non-failing drainfield in any calculation of required trench-bottom area when continued use of the existing drainfield is proposed.

If site conditions in any new soil absorption area require additional treatment or pressure dosing not required by the original permit for the existing sewage system, the owner may request a waiver provided the sewage system is on or serves real property consisting of not less than one nor more than four dwelling units.

When staff receives a bare application and determine that additional treatment and/or pressure dosing are required, the responsible EHS is to send the letter in Attachment #6 to the owner notifying the owner of the requirement(s) for additional treatment and/or pressure dosing and that a waiver is available. This suggested letter should be applicable to the majority of cases local health departments resolve. In these cases the owner may elect to ask VDH to design a system eligible for voluntary upgrade permitting because the system requires additional treatment or pressure dosing. The owner may also choose to hire a private sector designer to prepare plans and specifications for the voluntary upgrade system.

An owner requesting a waiver must return the properly executed waiver request and agreement found in Attachment #7. When properly executed by the owner, Attachment #7 constitutes the request for waiver and the waiver itself. The waiver must be properly executed before VDH issues a construction permit. The owner must produce written proof (certification)

of waiver recordation in the land records in compliance with Code § 32.1-164.1:1.B, prior to issuance of the construction permit.

Owners who apply for voluntary upgrade permits must indemnify and hold harmless VDH prior to the issuance of a construction permit. Release, hold harmless and indemnification agreements (see Attachments #8A and 8B) are not required to be recorded, though endorsements shall be notarized. Attachment 8A is the agreement when a waiver is issued and 8B contains the agreement for when there is no waiver. All construction permits issued for voluntary upgrades shall have the following statement attached: **"The upgrades specified in this construction permit are voluntary and not required by law."**

Attachment #9 is an informational letter for any owner who (a) obtained a waiver to repair a failing onsite sewage system pursuant to Code § 32.1-164.1:1.B. on or between July 1, 2004, and December 6, 2011, (b) completed such repair, and (c) wishes to voluntarily upgrade their system.

VENIS Entries

Repairs and voluntary upgrade permits with waivers are entered the same as any other construction permit. The construction permit is entered as either 'repair' or 'voluntary upgrade'. Update the status on the waiver (requested/granted).

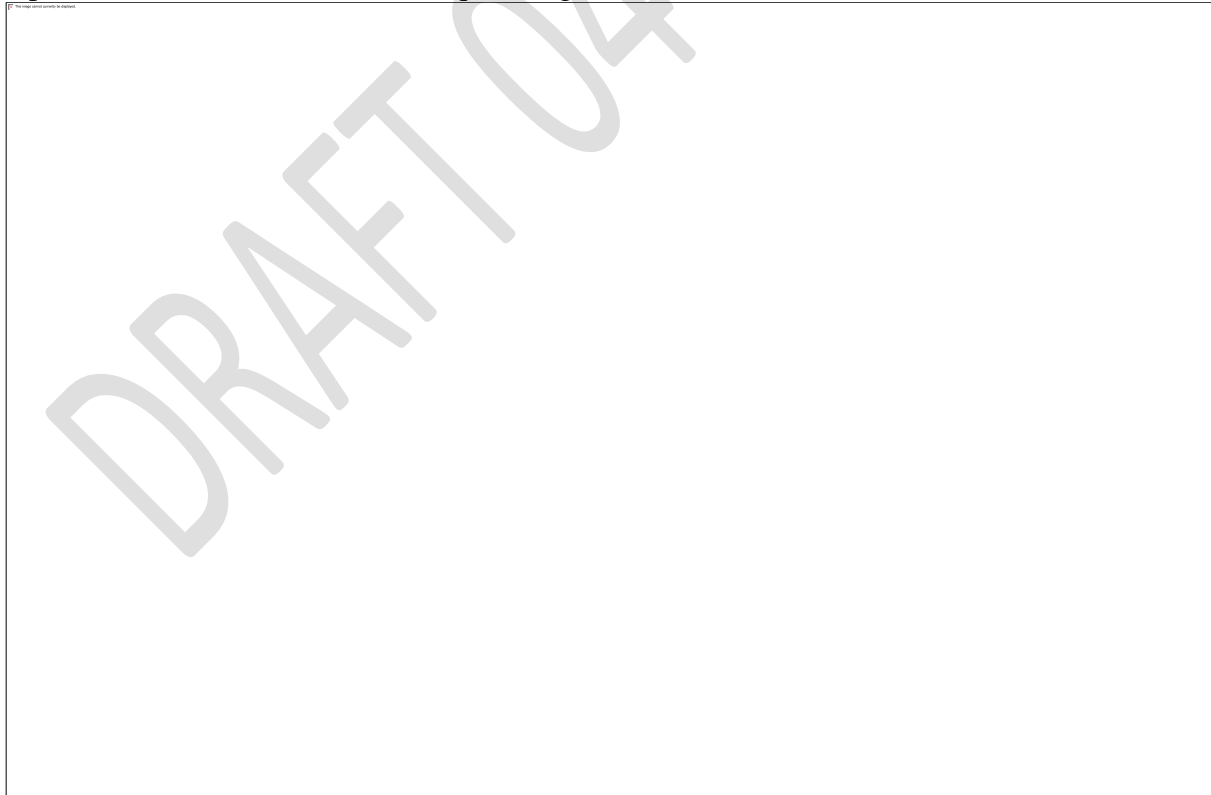


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- Attachment 1. Recommended NOAV when repair permit is issued
- Attachment 2. Identifying when compliance with current regulations is required
- Attachment 3.
 - 3A. Process Flow Diagram – Bare Applications
 - 3B. Process Flow Diagram – Private Sector Applications
- Attachment 4. Letter to owner regarding repair application and potential for waiver
- Attachment 5. Owner request for waiver and waiver for repair permit
- Attachment 6. Letter to owner regarding voluntary upgrade application and potential for waiver
- Attachment 7. Owner request for waiver and waiver for a voluntary upgrade
- Attachment 8.
 - 8A. Hold harmless agreement for voluntary upgrade with waiver
 - 8B. Hold harmless agreement for voluntary upgrade without a waiver
- Attachment 9. Informational letter for any owner who (a) obtained a waiver to repair a failing onsite sewage system pursuant to Code § 32.1-164.1:1.B. on or between July 1, 2004, and December 6, 2011, (b) completed such repair, and (c) wishes to voluntarily upgrade their system.

Attachment #1 – (Recommended NOAV When Repair Permit is Issued)

<OfficeName>
<OfficeAddress>
<OfficeCity>, <OfficeProvince>
<OfficePostalCode>
<OfficePhone> Voice
<OfficeFax2> Fax

<Today>

<OwnerContactFirst> <OwnerContactLast>
<OwnerMailingAddress>
<OwnerMailingCity>, <OwnerMailingProvince> <OwnerMailingPostalCode>

Certified Mail

Re: Tax Map/GPIN #: <LegalDescriptionTaxID> <LegalDescriptionGPIN>
Address: <PhysicalBuilding> <PhysicalStreet>,
<PhysicalCity>, <PhysicalMunicipality> County <PhysicalProvince>
<PhysicalPostalCode>

Dear <OwnerContactFirst> <OwnerContactLast> :

Thank you for contacting this office regarding the failure of your sewage system. You report certain conditions on your property that may constitute threats to public health and the environment. They include the following:

- On _____<YD#Today>, property owner _____ sent concerns about the discharge of raw or partially treated sewage on the ground surface of her property to _____the local health department.
- On _____ <YD#Today>, the local health department received a call from property owner _____ concerning the presence of raw or partially treated sewage on the ground’s surface of his property.
- On _____, <YD#Today> _____ Environmental Health Specialist with the local health department visited the affected properties to investigate. During his visits, _____ observed that the onsite sewage system serving the properties appeared to have discharged raw or partially treated effluent onto the ground surface.

These observations, if verified, constitute real or potential threats to public health and to the ground and surface waters of the Commonwealth.

Please be aware that it is your responsibility as owner of your property to operate the facilities in accordance with the applicable laws and regulations of the State Board of Health (“Board”) and that violations of the laws and regulations may result in enforcement actions provided under Title 32.1 of the *Code of Virginia*. The *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20 et seq., the “*Regulations*”) contain the following provisions:

12 VAC 5-610-80. Sewerage systems and/or treatment works required.

- A. *The discharge of untreated sewage onto the land or into the waters of the commonwealth is prohibited.*
- B. *No owner, person, or occupant shall discharge treated or untreated sewage onto the land, into the soil or into the waters of the Commonwealth without a valid permit from the commissioner, or as appropriate, a certificate issued by the Department of Environmental Quality in accordance with Title 62.1 of the Code of Virginia.*
- C. *All buildings, residences, and structures designed for human occupancy, employment or habitation and other places where humans congregate shall be served by an approved sewerage system and/or treatment works. An approved sewerage system or treatment works is a system for which a certificate to operate has been issued jointly by the department and the Department of Environmental Quality or a system which has been issued a separate permit by the commissioner.*

12 VAC 5-610-350. Failure of a sewage disposal system. *For the purpose of requiring correction of a malfunctioning sewage disposal system the presence of raw or partially treated sewage on the ground's surface or in adjacent ditches or waterways or exposure to insects, animals or humans is prima facie evidence of such system failure and is deemed a violation of these regulations. Pollution of the groundwater or backup of sewage into plumbing fixtures may also indicate system failure.*

The local health department recognizes that you have obtained a repair permit to correct the reported violations of the Regulations. This repair must be completed and all documents required to issue the operation permit be submitted to the local health department within 60 days of receipt of this letter. This letter serves as your Notice of Alleged Violation (NOAV), if you do not complete the repairs within the applicable time frame, you may be subject to enforcement action pursuant to Title 32.1 of the Virginia Code. Should you require more than 60 days to complete your repair, please contact <EH Manager> at <>.

This letter sets forth the local health department's observations and recommendations and provides notice that if you fail to proceed with your repair permit and correct the reported and/or observed regulatory violations, the Commissioner may pursue enforcement action in accordance with Title 32.1 of the Code of Virginia. This letter it is not a case decision as defined in §2.2-4001 of the *Code of Virginia*. If you have additional facts that you believe bear on this situation and you would like to schedule an informal-fact finding conference (IFFC) pursuant to §2.2-4019 of the *Code of Virginia*, please contact <HealthDirector> <HealthRegion> Director, at <OfficePhone> within fifteen (15) days of the receipt of this letter. The purpose of an IFFC is to determine if the regulatory violations alleged above occurred, and to discuss options to gain compliance. During the proceeding, you may be accompanied by counsel to assist you with the informal presentation of factual data, arguments or proof associated with the case. Additionally, you are entitled to receive advance notice of any facts, documents, or information in VDH's possession that could be relied upon in making an adverse determination.

Please feel free to call me at <OfficePhone> if you have any questions or if you wish to discuss this matter.

Sincerely,

<EHO>

<EHOPosition>

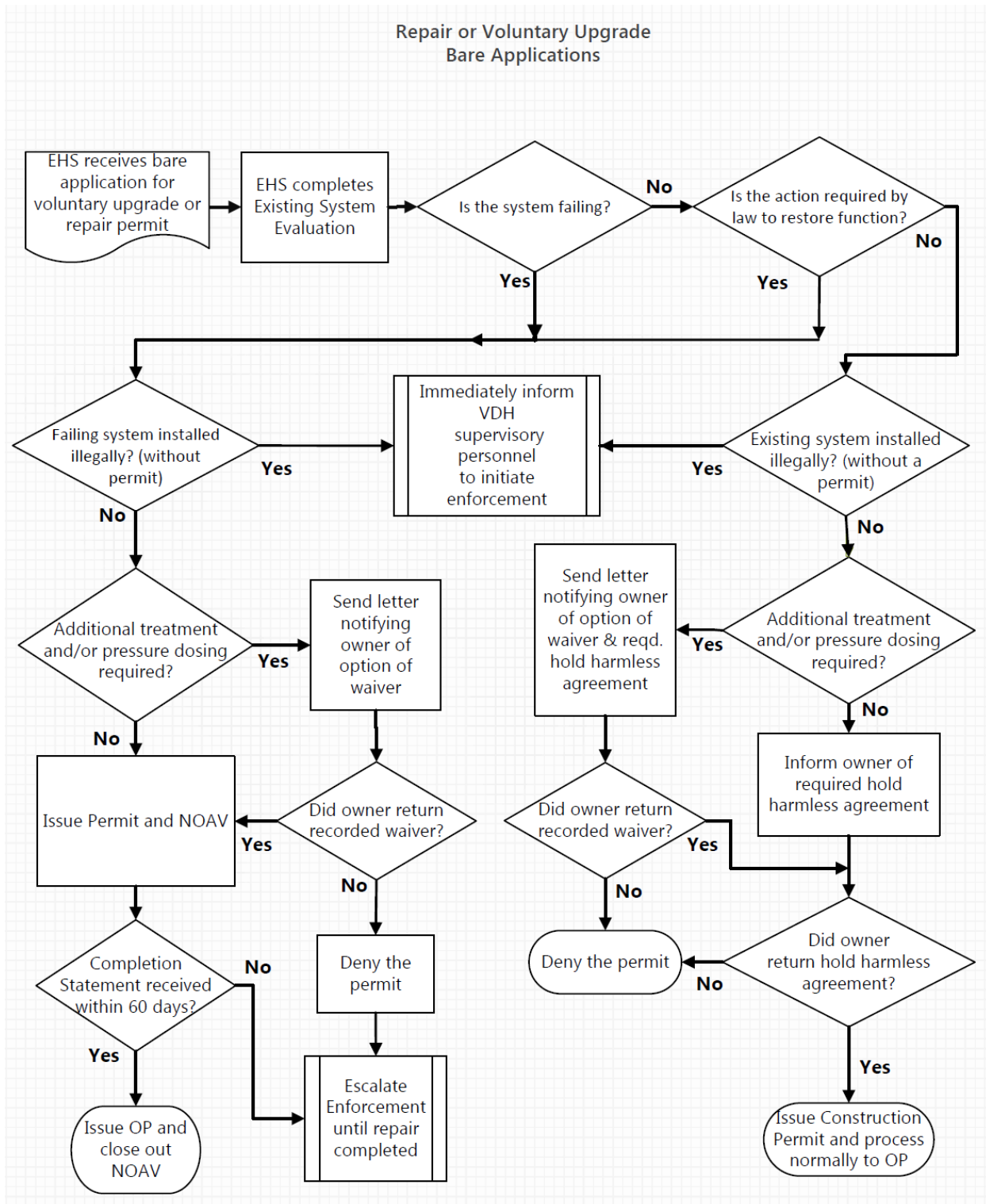
Attachment #2 – (Identifying When Compliance with Current Regulations is Required)

The following table is intended as guidance to determine when an upgrade to current regulations is triggered for a proposed project. The worst case scenario will dictate whether compliance with current regulations is required and waivers to treatment or pressure dosing may apply. When the 'as-is' condition is maintained with the proposed work, then compliance with new regulations is not triggered. Maintaining the as-is condition allows owners of older systems to replace their treatment units (TL-2 for TL-2 or TL-3 for TL-3) without requiring additional treatment, such as nitrogen reduction.

Application Type	Example Work	Must the sewage system comply with current regulations*?
Repair or Voluntary Upgrade	Replace one or more of the following sewage system components: sewer line, septic tank, tees in the septic tank, distribution box, conveyance line, or header line.	No (New component must comply with current regulations. For example, a new septic tank should have 48 hour detention time.)
Repair or Voluntary Upgrade	Replace or add to the dispersal field.	Yes (site and soil analysis needed to determine level of treatment required. Waivers may apply.)
Repair or Voluntary Upgrade	Replace or repair dispersal field piping with no change to soil loading rate or soil infiltrative surface	No
Repair or Voluntary Upgrade	Replace a TL-2, TL-3 treatment unit (same treatment level, does not have to be the same manufacturer) (maintain as-is condition)	No
Repair or Voluntary Upgrade	Improve the treatment level (no change to dispersal field) (Improving the as-is condition)	Yes. (Site and soil analysis needed to determine level of treatment required. Waivers may apply.)
New Construction	Installation of new treatment works in its entirety	Yes. Treatment waivers do not apply to construction permits.
Minor Modification (construction permit)	Add a new connection to an existing sewage system to serve a garage bathroom, such as a new sewer line or septic tank without increasing wastewater flow or strength. (modifications to soil dispersal field are ineligible for a minor modification)	No (New component must comply with current regulations. For example, a new septic tank should have 48 hour detention time.)
Conditional Permit (paper expansion)	No change in system design or system components	No

*Exceptions for design components other than pressure dosing or treatment level, granted in accordance with 12VAC5-610-280.C.2., can be used to obtain compliance.

Attachment 3A - (Process Flow Diagram – Bare Applications)



Attachment #4 - (Letter to Owner Regarding Repair Application and Potential for Waiver)

Date

Owner Name

Address

City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] Health Department received your application for a sewage system repair permit which did not include supporting documentation from a licensed onsite soil evaluator (“OSE”) or professional engineer (“PE”). Based on our site and soil evaluations (copy attached), the conditions on your lot may not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended July 1, 2000) (“SHDR”) and the *Alternative Onsite Sewage System Regulations* (12VAC5-613-10 et seq., effective December 7, 2011) (collectively, the “Regulations”) for the following reasons:

(Choose one or more or add as appropriate.)

1. Insufficient depth to a limiting factor such as the seasonal water table, a restrictive horizon, rock, etc.
2. Insufficient horizontal separation from well, shellfish waters, etc....
3. Insufficient area of suitable soil.

The repair system for your property must have advanced treatment, pressure dosing, or both as part of your repair system’s design. **[Note: modify this paragraph to fit the specific situation]** These requirements assure public health and groundwater supplies are protected and that the risk for human disease transmission is minimized.

Employees of the Virginia Department of Health (“VDH”) typically do not design sewage systems with advanced treatment or pressure dosing because of the complexity of these designs and the wide variety of brand-name products and equipment available. These types of designs require extensive consultation between the owner and an OSE/PE to assure that the owner’s needs are met. VDH does not have the resources to provide this extensive consultation and cannot choose specific products because of our regulatory relationship with product manufacturers.

Pursuant to Code of Virginia § 32.1-164.1:1.B, whenever an onsite sewage system is failing and it is on or serves real property consisting of not less than one and not more than four dwelling units, an owner may request a waiver from requirements for advanced treatment, pressure dosing, or both, as long as such a level of advanced treatment or pressure dosing was not required by the original permit and approval documents. Furthermore, the State Health

Commissioner shall issue such a waiver if the request meets the statutory prerequisites, including there being no finding by the Commissioner that the current system was installed illegally without a permit. Based upon the review of documents regarding your current onsite system, you are eligible for the waiver should you choose to apply for one.

If you choose to request a waiver, VDH staff will design your system at your request, as long as the requirements are relatively simple. If you do not obtain a waiver or decline to request that VDH design your system, you must hire a qualified consultant to design your repair or replacement system. Currently, VDH recognizes PEs (Professional Engineers licensed by the Virginia Department of Professional and Occupational Regulation) for any type of system design, and OSEs (Onsite Soil Evaluators licensed by the Virginia Department of Professional and Occupational Regulation) for certain system designs that do not require the practice of engineering. If you request a waiver and **do not** want VDH to design the repair system, please complete the enclosed Waiver Request and return it to this office with your OSE/PE plans for the repair or replacement system - **do not check the box requesting VDH to design your system**. If you request a waiver and prefer VDH to design your system, complete the waiver, check the design request box, and return it to our office (address noted on the letterhead). As soon as VDH receives this information, it will process your application and issue you a repair permit if the statutory requirements are met.

If you are signing the waiver agreement, have your signature notarized. This is a legal document so review it carefully. You may wish to seek legal advice from an attorney to explain the waiver and future consequences should you transfer the property to a new owner. The law requires you to record the waiver in the land records of the clerk of the circuit court in the jurisdiction in which the onsite sewage system is located. A repair waiver is only transferable in certain circumstances as identified under the Code of Virginia § 32.1-164.1:1.C.

Unless covered by an exception contain in Code of Virginia § 32.1-164.1:1.C, a waiver and the operating permit for your system are both null and void upon transfer or sale of the property on which the onsite sewage system is located. It is unlawful to operate an onsite sewage system without a valid operating permit (12VAC5-610-240). Unless transfer occurs pursuant to an exception in Code of Virginia § 32.1-164.1:1, a new owner will be unable to lawfully occupy the dwelling/structure and operate the sewage system until obtaining a new operating permit. Such new owner will need to apply for, and obtain, a new construction permit that complies with those parts of the Regulations to which you were previously granted a waiver (i.e. advanced treatment and/or pressure dosing) and any new requirements adopted after the waiver was granted. The operating permit for the system can only be reinstated after the required upgrades are completed. Pursuant to Code of Virginia § 32.1-164.1:1.D, you are required to deliver to the purchaser a written disclosure prior to the acceptance of a real estate purchase contract. The written disclosure statement shall be in a separate document, developed by the Real Estate Board. *These requirements apply to your system, even if it does not appear to be failing at the time of transfer.*

If you want an OSE/PE to design your system after requesting a waiver, please discuss with your consultant so he may submit plans incorporating your wishes. VDH will not change your expert's design and an OSE/PE must approve the system's final construction.

If you request a waiver and ask for VDH to design the new system, please remember that VDH lacks the resources to consider, inform, and consult with you about all design options available in the marketplace for a repair. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on your specific needs, please consider that VDH could design a system inconsistent with your immediate or long-term interests due to VDH's lack of resources and inability to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. VDH cannot recommend one product over another, just as VDH cannot design or recommend a specific proprietary pre-engineered system. VDH is unable to recommend certain products or proprietary designs because of VDH's unique position as a regulator and having scarce resources to provide you with detailed consultation. Consequently, it is possible VDH could not provide a design that is as well-tailored to your needs as compared to a private consultant. A private consultant would not necessarily have VDH's limitations, and could propose specific products and provide more in-depth consultation.

Also, VDH cannot advise you regarding how a system under a waiver may affect your ability to transfer the property given the restrictions on the transferability of a waiver. Additionally, VDH cannot advise you about liability issues should your system fail and adversely impact drinking water supplies. A system installed under a waiver may not comply with the Regulations regarding the level of treatment and/or pressure dosing requirements.

You will soon receive (or have already received) a letter from this office notifying you that the failure of your sewage system may constitute a violation of the Regulations. Please follow any directions contained in that letter and carefully heed any time limits for repairing your failing system. As I mentioned earlier in this letter, you are required to have an operating permit in order to use an onsite sewage system. I encourage you to complete the system repairs necessary to get a new operating permit as quickly as possible.

You have the right to challenge the results of VDH's site and soil evaluations and the decisions made regarding your repair application (see the first and second paragraphs of this letter) by requesting an informal fact-finding conference (IFFC). Your written request for an IFFC must be received in this office within 30 days from your receipt of this letter. Thank you for your prompt attention and action in this matter. Please call me at (____) ____ - ____ if you have more questions.

Sincerely,

EHSS

Attachment #5 – (Owner Request for Waiver and Waiver for Repairs)

REQUEST FOR WAIVER and WAIVER FOR A REPAIR PERMIT

This document, which includes a REQUEST FOR WAIVER AND WAIVER (collectively, “AGREEMENT”), is made and entered into this ____ Day of _____, 201_, by _____ <Insert Owner(s)>_____, and, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (hereinafter “DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS, OWNER owns ____<Insert Address/Tax Map number>_____ (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to repair the PROPERTY’S existing onsite sewage system; and

WHEREAS, the DEPARTMENT, in accordance with the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended July 1, 2000) (“SHDR”) and the *Alternative Onsite Sewage System Regulations* (12VAC5-613-10 et seq., effective December 7, 2011 (collectively, the “Regulations”), has determined that the onsite sewage system serving the PROPERTY is failing and must be repaired or replaced; and

WHEREAS, the DEPARTMENT determines that the REGULATIONS require additional treatment or pressure dosing in order to adequately protect public health and ground and surface water resources; and

WHEREAS, Code of Virginia § 32.1-164.1:1 provides that whenever any onsite sewage system is failing, and it is on or serves real property consisting of not less than one nor more than four dwelling units, and the Board's regulations impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly, or (ii) a new requirement for pressure dosing, the owner may request a waiver (hereinafter "WAIVER") from the requirements of the REGULATIONS pertaining to additional treatment and or pressure dosing for a repair system; and

WHEREAS, if the above stated requirements for an owner to request a waiver have been met, the State Health Commissioner (hereinafter, the "COMMISSIONER") shall grant such WAIVER, unless the COMMISSIONER finds that the existing sewage system was installed illegally without a permit; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, OWNER, by executing this AGREEMENT, hereby requests that the COMMISSIONER grant the WAIVER from additional treatment and/or pressure dosing requirements provided at Code of Virginia § 32.1-164.1:1.

NOW, THEREFORE, in exchange for the mutual promises contained herein, the OWNER and the COMMONWEALTH agree as follows: the WAIVER provided at Code of Virginia § 32.1-164.1:1 is hereby granted 24 hours after OWNER provides certification to the DEPARTMENT that this AGREEMENT has been recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located. Except as provided in Code of Virginia § 32.1-164.1:1.C, waivers granted hereunder shall not be transferable and shall be null and void upon transfer or sale of the

property on which the onsite sewage system is located. Additional treatment or pressure dosing requirements shall be imposed in such instances when the property is transferred or sold.

REQUEST FOR DEPARTMENT TO DESIGN A REPAIR SYSTEM

Check Here if this Section Applies.

OWNER hereby requests that an employee of the Virginia Department of Health design OWNER's sewage system. OWNER understands that the DEPARTMENT cannot serve as OWNER's consultant and that there are design choices that, depending upon OWNER's needs, may increase costs in the long run because of the requirement to upgrade OWNER's sewage system at the time the PROPERTY is transferred. If OWNER request a waiver and ask the DEPARTMENT to design the new system, please remember that the DEPARTMENT lacks the resources to consider, inform, and consult with OWNER about all design options available in the marketplace for a repair. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on OWNER's specific needs, the DEPARTMENT could design a system inconsistent with OWNER's immediate or long-term interests due to the DEPARTMENT's lack of resources and inability to provide OWNER with complete consultation services. The DEPARTMENT regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. The DEPARTMENT cannot recommend one product over another, just as the DEPARTMENT cannot design or recommend a specific proprietary pre-engineered system. The DEPARTMENT is unable to recommend certain products or proprietary designs because of the DEPARTMENT's unique position as a regulator and having scarce resources to provide OWNER with detailed consultation. Consequently, it is possible the DEPARTMENT could not provide a design that is as well-tailored to OWNER's needs as compared to a private consultant. A private consultant would not necessarily have the DEPARTMENT's limitations, and could propose specific products and provide more in-depth consultation.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

DRAFT 04 03 2017

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

DRAFT 04032017

Attachment #6 - (Letter to Owner Regarding Voluntary Upgrade Application and Potential for Waiver)

Date

Owner Name

Address

City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] Health Department received your application for a sewage system voluntary upgrade permit which did not include supporting documentation from a licensed onsite soil evaluator (“OSE) or professional engineer (“PE”). Based on our site and soil evaluations (copy attached), the conditions on your lot may not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended July 1, 2000) (“SHDR”) and the *Alternative Onsite Sewage System Regulations* (12VAC5-613-10 et seq., effective December 7, 2011) (collectively, the “Regulations”) for the following reasons:

(Choose one or more or add as appropriate.)

1. Insufficient depth to a limiting factor such as the seasonal water table, a restrictive horizon, rock, etc.
2. Insufficient horizontal separation from well, shellfish waters, etc.
3. Insufficient area of suitable soil.

The voluntary upgrade system for your property must have advanced treatment, pressure dosing, or both as part your system’s design. **[Note: modify this paragraph to fit the specific situation]** These requirements assure public health and groundwater supplies are protected and that the risk for human disease transmission is minimized.

Employees of the Virginia Department of Health (VDH) typically do not design sewage systems with advanced treatment or pressure dosing because of the complexity of these designs and the wide variety of brand-name products and equipment available. These types of designs require extensive consultation between the owner and an OSE/PE to assure that the owner’s needs are met. VDH does not have the resources to provide this extensive consultation and cannot choose specific products because of our regulatory relationship with product manufacturers.

Pursuant to Code of Virginia § 32.1-164.1:1.B, whenever an owner has elected to voluntarily upgrade an onsite sewage system pursuant to § 32.1-164.1:3 and it is on or serves real property consisting of not less than one and not more than four dwelling units, an owner may request a waiver from requirements for advanced treatment, pressure dosing, or both, as long as such a level of advanced treatment or pressure dosing was not required by the original permit and

approval documents. Furthermore, the State Health Commissioner shall issue such a waiver if the request meets the statutory prerequisites, including there being no finding by the Commissioner that the current system was installed illegally without a permit. Based upon the review of documents regarding your current onsite system, you are eligible for the waiver should you choose to apply for one.

If you choose to request a waiver, VDH staff will design your system at your request, as long as the requirements are relatively simple. If you do not obtain a waiver or decline to request that VDH design your system, you must hire a qualified consultant to design your voluntarily upgraded system. Currently, VDH recognizes PEs (Professional Engineers licensed by the Virginia Department of Professional and Occupational Regulation) for any type of system design, and OSEs (Onsite Soil Evaluators licensed by the Virginia Department of Professional and Occupational Regulation) for certain system designs that do not require the practice of engineering. If you request a waiver and **do not** want VDH to design the upgrade system, please complete the enclosed Waiver Request and return it to this office with your OSE/PE plans for the upgraded system - **do not check the box requesting VDH to design your system**. If you request a waiver and prefer VDH to design your system, complete the waiver, check the design request box, and return it to our office (address noted on the letterhead). As soon as we receive this information, we will process your application and issue you a voluntary upgrade permit.

If you are signing the waiver agreement, have your signature notarized. This is a legal document so review it carefully. You may wish to seek legal advice from an attorney to explain the Waiver. The law requires you record the waiver in the land records of the clerk of the circuit court in the jurisdiction in which the onsite sewage system is located. A voluntary upgrade waiver is transferable pursuant to a real estate purchase contract.

You are required by law to disclose the Waiver in writing to any and all potential purchasers or mortgage holders pursuant to Code of Virginia § 32.1-164.1:1.D.

If you want an OSE/PE to design your system after requesting a waiver, please discuss with your consultant so he may submit plans incorporating your wishes. VDH will not change your expert's design and an OSE/PE must approve the system's final construction.

If you request a waiver and ask for a VDH design, please remember VDH lacks the resources to consider, inform, and consult with you about all design options available in the marketplace for a voluntary upgrade. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on your specific needs, please consider that VDH could design a system inconsistent with your immediate or long-term interests due to VDH's lack of resources and inability to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. VDH cannot recommend one product over another, just as VDH cannot design or recommend a specific proprietary pre-engineered system. VDH is unable to recommend certain products or proprietary designs because of VDH's unique position as a regulator and having scarce resources to provide you with detailed consultation. Consequently, it is possible VDH could not provide a design that is as well-tailored to your needs as compared

to a private consultant. A private consultant would not necessarily have VDH's limitations, and could propose specific products and provide more in-depth consultation.

Also, VDH cannot advise you regarding how a system under a waiver may affect your ability to transfer the property; nor can VDH advise you about liability issues should your system fail and adversely impact drinking water supplies. A system installed under a waiver may not comply with the Regulations regarding the level of treatment and/or pressure dosing requirements.

You have the right to challenge the results of VDH's site and soil evaluations and the decisions made regarding your voluntary upgrade application (see the first and second paragraphs of this letter) by requesting an informal fact-finding conference (IFFC). Your written request for an IFFC must be received in this office within 30 days from receipt of this letter. Please call me at (____) ____-____ if you have more questions.

Sincerely,

EHSS

DRAFT 04 03 2017

Attachment #7 – (Owner Request for Waiver and Waiver for Voluntary Upgrades)

REQUEST FOR WAIVER and WAIVER FOR A VOLUNTARY UPGRADE

This document, which includes a REQUEST FOR WAIVER AND WAIVER (collectively, “AGREEMENT”), is made and entered into this ____ Day of _____, 201_, by _____ <Insert Owner(s)>_____, and, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (hereinafter “DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS, OWNER owns ____<Insert Address/Tax Map number>_____ (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to voluntarily upgrade the PROPERTY’S existing onsite sewage system; and

WHEREAS, the DEPARTMENT determined that the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended July 1, 2000) (“SHDR”) and the *Alternative Onsite Sewage System Regulations* (12VAC5-613-10 et seq., effective December 7, 2011 (collectively, the “Regulations”), require additional treatment or pressure dosing that was not provided by the voluntary upgrade requested by OWNER; and

WHEREAS, the voluntary upgrade must provide additional treatment to comply with the REGULATIONS and adequately protect public health and water resources; and

WHEREAS, Code of Virginia § 32.1-164.1:1 provides that whenever an owner has elected to voluntarily upgrade an onsite sewage system pursuant to Code of Virginia § 32.1-164.1:3, the system is on or serves real property consisting of not less than one nor more than four dwelling units, and the REGULATIONS impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly, or (ii) a new requirement for pressure dosing, then the owner may request a waiver (hereinafter “WAIVER”) from the requirements of the REGULATIONS pertaining to additional treatment and/or pressure dosing for the proposed upgraded system; and

WHEREAS, if the above stated requirements for an owner to request a waiver have been met, the State Health Commissioner (hereinafter “COMMISSIONER”) shall grant such WAIVER, unless the COMMISSIONER finds that the existing sewage system was installed illegally without a permit; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, OWNER, by executing this AGREEMENT, hereby requests that the COMMISSIONER grant the WAIVER from additional treatment and/or pressure dosing requirements provided at Code of Virginia § 32.1-164.1:1.

NOW, THEREFORE, in exchange for the mutual promises contained herein, the OWNER and the COMMONWEALTH agree as follows: the WAIVER provided at Code of Virginia § 32.1-164.1:1 is hereby granted 24 hours after OWNER provides certification to the DEPARTMENT that this AGREEMENT has been recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located.

REQUEST FOR DEPARTMENT TO DESIGN A VOLUNTARY UPGRADE SYSTEM

- Check Here if this Section Applies.

OWNER hereby requests that an employee of the Virginia Department of Health design OWNER's sewage system. OWNER understands that the DEPARTMENT cannot serve as OWNER's consultant. If OWNER request a waiver and ask the DEPARTMENT to design the new system, please remember that the DEPARTMENT lacks the resources to consider, inform, and consult with OWNER about all design options available in the marketplace for a voluntary upgrade. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on OWNER's specific needs, the DEPARTMENT could design a system inconsistent with OWNER's immediate or long-term interests due to the DEPARTMENT's lack of resources and inability to provide OWNER with complete consultation services. The DEPARTMENT regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. The DEPARTMENT cannot recommend one product over another, just as the DEPARTMENT cannot design or recommend a specific proprietary pre-engineered system. The DEPARTMENT is unable to recommend certain products or proprietary designs because of the DEPARTMENT's unique position as a regulator and having scarce resources to provide OWNER with detailed consultation. Consequently, it is possible the DEPARTMENT could not provide a design that is as well-tailored to OWNER's needs as compared to a private consultant. A private consultant would not necessarily have the DEPARTMENT's limitations, and could propose specific products and provide more in-depth consultation.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

DRAFT 04 03 2017

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

DRAFT 04032017

Attachment #8A – (Hold Harmless Agreement for Voluntary Upgrades with Waivers)

**VOLUNTARY UPGRADE
RELEASE, HOLD HARMLESS,
AND INDEMNIFICATION AGREEMENT**

This AGREEMENT is made and entered into this ____ Day of _____, 20__, by and between _____ and _____, including, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (“DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS, _____ <Insert Property Description>
_____, Virginia (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to voluntarily upgrade the existing onsite sewage system serving PROPERTY; and

WHEREAS, the DEPARTMENT determined that the *Sewage Handling and Disposal Regulations* (12VAC5-610) and the *Alternative Onsite Sewage Systems Regulations* (12VAC5-613) (collectively, the “REGULATIONS”), require additional treatment and/or pressure dosing not provided by the voluntary upgrade requested by OWNER; and

WHEREAS, the voluntary upgrade must provide additional treatment and/or pressure dosing to comply with the REGULATIONS and adequately protect public health and water resources; and

WHEREAS, Code of Virginia § 32.1-164.1:1 provides that whenever an owner has elected, pursuant to Code of Virginia § 32.1-164.1:3, to voluntarily upgrade an onsite sewage system that is on or serves real property consisting of not less than one nor more than four dwelling units, and the REGULATIONS impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly, or (ii) a new requirement for pressure dosing, then the owner may request a waiver (hereinafter “WAIVER”) from the requirements of the REGULATIONS pertaining to additional treatment and/or pressure dosing; and

WHEREAS, the State Health Commissioner (“COMMISSIONER”) shall grant such WAIVER, unless the COMMISSIONER finds that the existing system was installed illegally without a permit; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, pursuant to Code of Virginia § 32.1-164.1:1, OWNER requested and received the WAIVER from additional treatment requirements and/or pressure dosing; and

WHEREAS, Code of Virginia § 32.1-164.1:3 allows the DEPARTMENT to require OWNER to indemnify and hold harmless the DEPARTMENT before issuing the construction permit.

NOW, THEREFORE, OWNER agrees to and hereby does release the DEPARTMENT from any and all claims, complaints, demands, actions, causes of action, liabilities, and obligations, whether administrative, legal or equitable, whether known or unknown, which OWNER now has or may have in the future relating to or arising from the voluntary upgrade, including, without limitation, any and all claims due to the failure of any person to

comply with federal, state, or local laws or regulations, claims under the Virginia Tort Claims Act, the Virginia Constitution, the United States Constitution and amendments thereto, or under common law. Furthermore, OWNER expressly releases the DEPARTMENT from any and all claims, actions, causes of action, or obligations under the Virginia Onsite Sewage Indemnification Fund, § 32.1-164.1:01 of the *Code of Virginia*, that may arise from or be related to the repair, replacement, and/or operation of OWNER's onsite sewage disposal system pursuant to the voluntary upgrade, if installed.

OWNER also agrees to hold harmless and indemnify the DEPARTMENT for any sum of money or judgment against the DEPARTMENT, including reasonable attorneys' fees incurred in the defense of any action arising out of or related to the voluntary upgrade specified in the permit and not required by law.

Severability. If any portion of this AGREEMENT is held to be void or deemed unenforceable for any reason, the remaining portion shall survive and remain in effect, unless the effect of such severance shall defeat the parties' intent as set forth herein, with the parties asking the Court to construe the remaining portions consistent with the expressed intent of the parties.

Entire Agreement. OWNER acknowledges that OWNER has had an opportunity to consult with an attorney concerning OWNER's rights and obligations. OWNER acknowledges that OWNER has had sufficient time and opportunity to consider this AGREEMENT with the DEPARTMENT, that OWNER has read this AGREEMENT, that OWNER fully understands and agrees to its terms and conditions, and that there exists no other promises, representations, inducements or agreements related to this AGREEMENT, except as specifically set forth herein. Furthermore, OWNER acknowledges that this constitutes the entire agreement between OWNER and the DEPARTMENT.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

DRAFT 04032017

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

DRAFT 04032017

Attachment #8B – (Hold Harmless Agreement for Voluntary Upgrades Without Waivers)

**VOLUNTARY UPGRADE
RELEASE, HOLD HARMLESS,
AND INDEMNIFICATION AGREEMENT**

This AGREEMENT is made and entered into this ____ Day of _____, 20__, by and between _____ and _____, including, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (“DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS, _____ <Insert Property Description>
_____, Virginia (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to voluntarily upgrade the existing onsite sewage system serving PROPERTY; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, Code of Virginia § 32.1-164.1:3 allows the DEPARTMENT to require OWNER to indemnify and hold harmless the DEPARTMENT before issuing the construction permit.

NOW, THEREFORE, OWNER agrees to and hereby does release the DEPARTMENT from any and all claims, complaints, demands, actions, causes of action, liabilities, and obligations, whether administrative, legal or equitable, whether known or unknown, which

OWNER now has or may have in the future relating to or arising from the voluntary upgrade, including, without limitation, any and all claims due to the failure of any person to comply with federal, state, or local laws or regulations, claims under the Virginia Tort Claims Act, the Virginia Constitution, the United States Constitution and amendments thereto, or under common law. Furthermore, OWNER expressly releases the DEPARTMENT from any and all claims, actions, causes of action, or obligations under the Virginia Onsite Sewage Indemnification Fund, § 32.1-164.1:01 of the *Code of Virginia*, that may arise from or be related to the repair, replacement, and/or operation of OWNER's onsite sewage disposal system pursuant to the voluntary upgrade, if installed.

OWNER also agrees to hold harmless and indemnify the DEPARTMENT for any sum of money or judgment against the DEPARTMENT, including reasonable attorneys' fees incurred in the defense of any action arising out of or related to the voluntary upgrade specified in the permit and not required by law.

Severability. If any portion of this AGREEMENT is held to be void or deemed unenforceable for any reason, the remaining portion shall survive and remain in effect, unless the effect of such severance shall defeat the parties' intent as set forth herein, with the parties asking the Court to construe the remaining portions consistent with the expressed intent of the parties.

Entire Agreement. OWNER acknowledges that OWNER has had an opportunity to consult with an attorney concerning OWNER's rights and obligations. OWNER acknowledges that OWNER has had sufficient time and opportunity to consider this AGREEMENT with the DEPARTMENT, that OWNER has read this AGREEMENT, that OWNER fully understands and agrees to its terms and conditions, and that there exists no other promises, representations, inducements or agreements related to this AGREEMENT, except as specifically set forth herein. Furthermore, OWNER

acknowledges that this constitutes the entire agreement between OWNER and the DEPARTMENT.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

DRAFT 04032017

Attachment #9 - (Informational Letter to Owner with Repair Waiver Issued July 1, 2004 through December 6, 2011, Regarding Option to Voluntarily Upgrade the System)

[Date]

[Name]

[Address]

[City, State, Zip]

Dear [Name]

Our records indicate that you have a septic system located at [specific address] for which a repair waiver was applied for and received during the period of July 1, 2004 to December 6, 2011. Due to recently passed legislation, you may be eligible for a voluntary upgrade waiver to this septic system.

During the 2015 legislative session, the Virginia General Assembly passed House Bill 1804 (HB 1804), which amended Code of Virginia § 32.1-164.1:1.B. The amended statute provides that a property owner who obtained a waiver to repair a failing onsite sewage system between the dates specified above and completed such a repair, and wishes to voluntarily upgrade the same septic system may request, and shall receive, a voluntary upgrade waiver. HB 1804 can be found in its entirety at the following link: <http://leg1.state.va.us/cgi-bin/legp504.exe?151+ful+HB1804ER+pdf>

Should you have any questions about HB 1804, your eligibility or the process for receiving a voluntary upgrade waiver, please contact _____ Health Department at _____.

Sincerely,

EHSS

Existing System Evaluation

VDH Use OnlyHDIN: _____
VPDES GP: _____

Owner and Application Information <input type="checkbox"/> Repair <input type="checkbox"/> Voluntary Upgrade <input type="checkbox"/> SAP	
Name:	Phone Number:
Address:	
Email:	

System Location			
Address:			
Tax Map/GPIN #:			
Subdivision:	Section:	Block:	Lot:
Directions:			

System File Information	
Permit Type: <input type="checkbox"/> Onsite Disposal	<input type="checkbox"/> Stream Discharging System
Property Type:	
Permitted Design Flow: _____ gpd	Permitted #Bedrooms: _____
System Type: <input type="checkbox"/> Conventional <input type="checkbox"/> Alternative If Alternative, Treatment Mfg. & Model: _____	
Dispersal Method: <input type="checkbox"/> Gravity <input type="checkbox"/> Pump to Gravity <input type="checkbox"/> LPD <input type="checkbox"/> Drip	
Dispersal Media: <input type="checkbox"/> Gravel <input type="checkbox"/> Gravelless Material <input type="checkbox"/> Tire Chips <input type="checkbox"/> Sand	
Gravelless Type: _____ Notes: _____	
<input type="checkbox"/> Attach a Copy of As-built drawing or drawing of system layout	

Existing System Evaluation					
Failure Observed or reported by owner: <input type="checkbox"/> Yes <input type="checkbox"/> No: <input type="checkbox"/> Backup into home <input type="checkbox"/> Effluent on the ground surface					
If failure observed or reported by owner, REPAIR permit REQUIRED .					
Number of Occupants: _____ Date System Installed: _____					
Current Use: _____ Current Number of Bedrooms: _____					
Has property been occupied during previous 30 day period? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Garbage Disposal: <input type="checkbox"/> Yes <input type="checkbox"/> No Water Softener: <input type="checkbox"/> Yes <input type="checkbox"/> No Jacuzzi/Hot Tub: <input type="checkbox"/> Yes <input type="checkbox"/> No					
Date of Last Septic Tank Pump Out: _____ Date of Last Operator Visit _____					
Component Status (place check under appropriate box)					
Component	Present	Inspected	Functional	Non-Functional	Observations/Comments
Sewer Line					
Septic Tank					
Septic Tank Tees					
Treatment Unit					
Pump Chamber					
Pump					
Disinfection					
Conveyance Line					

D-Box					
Splitter Manifold					
Header Trench					
Dispersal Pipe					
Dispersal media					
Dispersal Field					
Other _____					
Other _____					
Additional Analyses					
Analysis	Needed	Conducted	Observations/Comments		
Flow					
Wastewater Sample					
Dye Test					
Other _____					

Additional Comments and Observations:

Sketch, if applicable:

Recommended Action: Repair

Identify Probable Cause of Component Malfunction (check all that apply):

- Unknown Damaged/Compromised Deterioration Hydraulic Overload Organic Overload Improper Maintenance Root Infiltration

Describe temporary corrective recommended action(s) and purpose of action(s): _____

Describe Permanent recommended action(s) and purpose of action(s): _____

Form Completed By:

Name: _____ Signature: _____

Date: _____

Professional License Type and Number: _____

Recommended Action: Voluntary Upgrade

If Voluntary Upgrade,

Describe recommended action(s) and the 'improvement' associated with the voluntary upgrade:

Owner must provide signature to following statement:

As the owner, I have not observed any sewage on the ground or experienced a backup of sewage into my home.

Name: _____ Signature: _____

Date: _____

Form Completed By:

Name: _____ Signature: _____

Date: _____

Professional License Type and Number: _____

Summary of Review Pursuant to § 32.1-165

Is the existing onsite sewage system safe, adequate and proper for the proposed use?

(YES) Comments: _____

(NO) Comments: _____

Other Comments: _____

Form Completed By:

Name: _____ Signature: _____

Date: _____

Professional License Type and Number: _____

Courtesy Review of Building Plans not for Human Occupancy

Comments: _____

Form Completed By:

Name: _____ Signature: _____

Date: _____

Professional License Type and Number: _____