

October 15, 2004

To: District Health Directors
District Environmental Health Managers
Office of Environmental Health Services
Authorized Onsite Soil Evaluators (AOSEs)

From: Robert B. Stroube, State Health Commissioner

Subject: Implementation of House Bill 930

Guidance Memoranda and Policies (GMP) # 128

I. Background.

The 2004 General Assembly passed House Bill 930 (Acts of Assembly, Chapter 916, 2004) which amends § 32.1-164.1:1 of the *Code of Virginia* by adding the following subsection:

- B. Further, whenever any onsite sewage system is failing and the Board's regulations for repairing such failing system 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 from such requirements. The Commissioner shall grant any request for such waiver, unless he finds that 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. Except between a husband and a wife, 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.*

The owner of the relevant property shall disclose, in writing, to any and all potential purchasers or mortgage holders that any operating permit for the onsite sewage system that has been granted a waiver authorized by this subsection shall be null and void at the time of transfer or sale of the property and that the Board's regulatory requirements for additional treatment or pressure dosing shall be required before an operating permit may be reinstated.

This guidance document replaces GMP #124 and outlines procedures for processing applications for repair permits (construction permits) pursuant to § 32.1-164.1:1.B and 12 VAC 5-610-280.C.2. The policy also contains suggested letters, a flow chart, and an Agreement to be executed by any owner who requests the Waiver. **GMP #124 is hereby rescinded.**

II. General.

Section 32.1-164.1:1.B of the *Code* offers financial relief (a waiver) to the current owner of a property whose system is failing and who is facing a new requirement(s) for secondary treatment, pressure dosing (PD), or both. In practical terms, this means that a system originally permitted (in either primary or reserve areas) to disperse secondary or better effluent (SE) must be repaired using similar treatment. The owner of such a system would not be eligible for a waiver from the *treatment* requirements of the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20 et seq., as amended July 1, 2000, the *Regulations*). That owner, however, would be eligible for a waiver from pressure dosing as long as his original permit did not require pressure dosing in either the primary or reserve areas. The same reasoning also applies to a system originally permitted for pressure dosing in either the primary or reserve areas- the owner of such a system is not eligible for a waiver from pressure dosing. An owner with a system originally permitted for both PD and SE in either the primary or reserve areas is not eligible for a waiver.

A qualified owner may request a waiver and the waiver must be granted unless the Commissioner finds “that the failing system was installed illegally without a permit.” The waiver is transferable only between a husband and a wife. Any other transfer of the property voids the waiver and the current operating permit for the system, even if that system is not failing at the time of the transfer. To obtain a new operating permit, the new owner must comply with the *Regulations* that were waived as well as any subsequent requirements that may have been imposed since the waiver was granted. Any owner who receives a waiver must record the Waiver in the land records of the circuit court and disclose the waiver in writing to any potential purchaser or mortgage holder.

Section 280.C.2 of the *Regulations* provides that the district health director or environmental health manager may, in cases of economic hardship, waive the requirement for secondary treatment for repairs. Effective immediately, this policy shall be used to implement § 280.C.2 of the *Regulations*.

III. System Designs.

To ensure the financial relief intended by the law, Virginia Department of Health (VDH) personnel will continue to design gravity-flow or simple pump STE systems if requested by the owner.¹ VDH employees are advised that they should refrain from designing systems with SE and/or PD. Such system designs require either the practice of engineering or

¹ GMP #125 contains general guidance for VDH employees and others regarding exemptions from the Practice of Engineering.

the need to name specific product brands. VDH regulates the onsite sewage industry and issues approvals for manufacturers and proprietary products. Hence, it is inappropriate for VDH to design onsite systems with PD or SE because that would give the appearance of VDH endorsing one product over another one. Further, extensive consulting is required between the designer and the owner to assure that the owner's needs are met and appropriate products are chosen and used. Such individual and extensive consulting is not supported by the fees currently established for onsite sewage system applications and VDH does not have sufficient resources to support such activities.

Section 32.1-164.1:1.B of the *Code* requires that any system with a waiver must be upgraded with the current regulations upon transfer of the property (transfers between husbands and wives are exempted). This means that the SE and/or PD requirements that were waived for the current owner will be added for the new owner. Therefore, it is in the owner's best interest to consider the current and future costs of complying with the *Regulations* by seeking appropriate consultation outside of VDH. For example, installing a system under a waiver could necessitate a more expensive repair system in the future, it might delay a property transfer while a system is upgraded, or it could negatively impact the property's value because a system installed under the waiver may not comport with what the industry's current body of knowledge and experience.

It is the owner's responsibility to determine whether he is best served with a repair system in accordance with § 32.1-164.1:1.B and this policy. The owner should consult with experts in the private sector to determine whether he would prefer a system that anticipates the subsequent inclusion of SE and/or pressure-dosing components or a system designed by VDH that usually will not include those considerations (as stated before, VDH does not have the resources to extensively consult with the owner on the hundreds of design options currently available in the marketplace). For these reasons it is imperative that owners be made aware of the importance of seeking advice from competent private design professionals, even if VDH staff is designing his system pursuant to the waiver provided by the law.

This policy shall not be construed as imposing any obligation on VDH to provide consulting services, to minimize or maximize an owner's financial liability, or to guarantee that any system designed and permitted by VDH will function for any specified period of time. All stakeholders must understand that any system designed with a waiver under § 32.1-164.1:1.B does not comply with the *Regulations* for new construction nor does it meet the industry's current expectations for system designs.

IV. Procedures.

The responsible Environmental Health Specialist Senior (EHSS) 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. Attachment #4 is a flowchart for determining whether an owner qualifies for a waiver from SE, PD, or both. The shaded boxes indicate decision paths where owners may request VDH staff to design the repair system.

Attachment #1 is a letter notifying the owner of the requirement(s) for SE and/or PD and that the waiver is available. This suggested letter should be applicable to the majority of cases that local health departments will see. **In these cases the owner may elect to ask VDH to design a system under the Waiver because the system does not require SE or PD.** The owner may also choose to hire an AOSE/PE to prepare plans and specifications for the repair system. Attachment #2 is similar to Attachment #1 and contains suggested language for notifying an owner that he is eligible for only one of the waivers (SE or PD) or that he is not eligible for any waiver. Attachment #2 will require substantial modification to tailor it to a specific situation and it should not be used as a “form letter.”

Prior to sending a letter by certified mail notifying an owner that he is eligible for a waiver, the EHSS must determine whether the failing system was installed illegally without a permit. If the EHSS finds substantial evidence that the system was installed illegally without a permit, then he should immediately inform the appropriate VDH supervisory personnel to initiate enforcement proceedings. The letters in Attachments #1 and #2 do not apply to any system that was installed illegally without a permit.

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

An owner wishing to receive a waiver must return the properly executed waiver request and agreement found in Attachment #3. When properly executed by the owner, Attachment #3 constitutes the request for waiver, the owner's agreement to release VDH and the Commonwealth of liabilities associated with the waiver, and the waiver itself. If an owner is asking VDH staff to design a repair system under a waiver, that waiver must be properly executed and in the hands of the responsible EHSS before a construction permit is released. The process for issuing a construction permit with a waiver is the same as issuing a conditional permit under § 250.J of the *Regulations*. When the owner produces written proof (certification) that he has recorded the waiver in the land records, the construction permit is released and it becomes effective one day later.

Responsibility and authority for implementing § 32.1-164.1:1.B is hereby delegated to the district health directors.

III. Terms.

Pressure Dosing- means any system under the *Regulations* that requires a pump to pressurize a dosing system or device. Examples include drip dispersal, drip irrigation, manifold systems, mound systems, and low pressure distribution systems, etc. The definition does not

include gravity systems, systems that pump effluent to a higher elevation (distribution box with or without enhanced flow), or systems that require a pump because the ground surface over the soil absorption area is higher than the elevation of the lowest fixture in the house.

Treatment beyond the level of treatment provided by the existing system when operating properly- The *Regulations* require an owner to provide secondary treatment for the repair of a failing system if the repair or replacement system does not “substantially comply” with the requirements of the *Regulations* for a system with STE. The most common application of this term is expected to occur when an owner of a individual single-family home needs a repair permit that involves replacing all or part of the soil absorption system, the existing system is a STE system, and the site and soil conditions do not substantially comply with the *Regulations* for a STE system. In such cases the owner is required to provide secondary treatment (SE) as part of the design of the repair system.

For the purposes of implementing House Bill 930 any system installed under any regulation other than the *Regulations* is deemed to have had a requirement for STE, unless treatment beyond STE was specifically required at the time the system was originally permitted. Examples of such specific additional treatment requirements include, but are not limited to variances, terms of settlement of appeals or orders of the Appeal Review Board, Orders of the Board of Health (includes consent orders), mass drainfields, designs by a PE or by an AOSE/PE, and proprietary pre-engineered systems approved by VDH (listed in GMPs).

System “installed illegally without a permit”- means that there is substantial evidence that an owner (either the current one or a previous one) installed an onsite sewage system intentionally without a permit at a time when there was a requirement to obtain a permit prior to installing an onsite sewage system. The mere lack of permit documentation in VDH files is not substantial evidence that a system was installed illegally without a permit. There must be additional evidence that supports a conclusion that a person knew a permit was required and intentionally installed a system without one. In other cases VDH has relied upon evidence such as a prior permit denial for the same property, a building permit issued for a different type of structure (i.e. building permit issued for a barn or shed, but instead a home was built), and records of other local government offices. Please contact the Division of Onsite Sewage and Water Services if there are questions about a specific case.

List of Attachments:

1. Attachment #1: Letter to Applicant, SE with or without PD Dosing Required
2. Attachment #2: Suggested letter to be modified by VDH staff as appropriate
3. Attachment #3: Request for Waiver/Release and Hold Harmless Agreement/Waiver
4. Attachment #4: Flow chart for determining when the waiver applies.

Attachment 1
Date

Owner Name
Address
City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] County Health Department received your application for a sewage system repair permit which did not include supporting documentation from an AOSE/PE.² Based on our site and soil evaluations (copy attached), the conditions on your lot do not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20, as amended July 1, 2000, the *Regulations*) for a Septic Tank Effluent (STE, *Regulations*, § 594) system for the following reasons:³

(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 Secondary Effluent (SE, *Regulations*, § 280)⁴, pressure dosing⁵, or both as part your repair system's design. **[Note: modify this paragraph to fit the specific situation]** These requirements assure that 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 SE 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 AOSE/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 all product manufacturers.

The Virginia General Assembly passed a law, effective July 1, 2004, that provides an opportunity for you to receive a Waiver from the requirements for SE, pressure dosing, or both

² AOSE/PE means a Professional Engineer (PE) working in consultation with an Authorized Onsite Soil Evaluator (AOSE) or an AOSE.

³ Septic Tank Effluent means "effluent characterized by a five-day biochemical oxygen demand between 120 and 200 mg/l; total suspended solids between 70 and 150 mg/l; fats, oils, and grease of 30 mg/l or less; and having no other toxic, hazardous, or constituents not routinely found in residential wastewater flows (*Regulations*, § 120)."

⁴ Secondary Effluent means "effluent treated to reduce five-day biochemical oxygen demand to 30 mg/l or less, total suspended solids to 30 mg/l or less, and fats, oils, and grease to less than 5 mg/l (*Regulations*, § 120)."

⁵ Pressure Dosing means any system under the *Regulations* that requires a pump to pressurize a dosing system or device. Examples include drip dispersal, drip irrigation, manifold systems, mound systems, and low pressure distribution systems, etc. The definition does not include gravity systems, systems that pump to a higher elevation (distribution box with or without enhanced flow), or systems that require a pump because the ground surface over the soil absorption area is higher than the elevation of the lowest fixture in the house.

as long as your system was not installed illegally without a permit and as long as there was no requirement for these in your original permit and approval documents (Va. Code, § 32.1-164.1:1). I have determined that you are eligible for the Waiver if you choose to apply for it.

If you choose to receive the Waiver, VDH staff will design your system, at your request, as long as the requirements are relatively simple. If you do not want to receive the Waiver or if you do not want VDH to design your system, you will need to hire a qualified consultant to design your repair or replacement system. Currently, VDH recognizes PEs (Professional Engineers licensed in the Commonwealth of Virginia) for any type of system design and AOSEs (Authorized Onsite Soil Evaluators certified by VDH) for certain system designs that do not require the practice of engineering. If you wish to receive the Waiver and **do not** want VDH to design the repair system, please complete the enclosed Waiver Request, Agreement, and Waiver document (“Waiver”) and return it to this office with your AOSE/PE plans for the repair or replacement system- **do not check the box requesting VDH to design your system**. If you want the Waiver and prefer that VDH design your system, simply 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 act accordingly and issue you a repair permit as soon as possible.

If you are signing the Waiver agreement, you will need to have your signature notarized. This is a legal document and you should review it carefully. You may wish to seek legal advice from an attorney to explain what the Waiver means and its future consequences when you transfer the property to a new owner. The law requires that you record the Waiver in the land records of the clerk of the circuit court in the jurisdiction in which your property is located. A Waiver is only transferable between a husband and wife.

The Waiver and the operating permit for your system are both null and void immediately whenever your property is transferred to any person (or entity) other than your spouse (husband or wife). It is unlawful to operate an onsite sewage system without a valid operating permit (*Regulations*, § 240). This means that any new owner will not be able to lawfully occupy the dwelling/structure and operate the sewage system until he obtains a new operating permit. The new owner will need to apply for and obtain a new construction permit that complies with those parts of the *Regulations* that were waived (i.e. secondary treatment and/or pressure dosing) and any new requirements that may have been adopted after the Waiver was granted. The operating permit for the system can only be reinstated after the upgrades are completed. You are required by law to disclose these conditions in writing to any and all potential purchasers or mortgage holders. *These requirements apply to your system, even if it does not appear to be failing at the time of transfer.*

If you want an AOSE/PE to design your system under the Waiver, please remember to tell your consultant so that he can submit plans that incorporate your wishes. VDH will not change your expert’s design and an AOSE/PE must approve the system’s final construction.

If you request the Waiver and ask for a VDH design, please remember that VDH does not have the resources to consider, inform, and consult with you about all of the design options

available in the marketplace for a repair. There are hundreds of design options and potentially hundreds of products from which to choose within each possible design. Depending on your specific needs, please consider that VDH could design a system that would not meet your immediate or long-term interests because of our lack of resources to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves (or denies) requests from product manufacturers- we cannot recommend one product over another just as we cannot design or recommend a specific proprietary pre-engineered system. Without being able to recommend certain products or proprietary designs because of our unique position as a regulator and having scarce resources to provide you with detailed consultation, it is possible that you could get an inferior design 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.⁶

Also remember that VDH cannot advise you about how a system under a Waiver might affect your ability to sell the property since you are required to upgrade the system at the time of property transfer; nor can we advise you about liability issues should your system fail and adversely impact drinking water supplies. A system installed under a Waiver does not comply with the *Regulations* which were adopted by the Board of Health to provide the least intrusive methods to adequately protect groundwater supplies and public health.

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. Because your sewage system has failed, your sewage system operation permit is null and void in accordance with 12 VAC 5-610-340 of the *Regulations*. As I mentioned earlier in this letter, you are required to have an operating permit in order to use an onsite sewage system and I encourage you to complete the steps 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 we have made regarding your repair application (see the first and second paragraphs of this letter) by requesting an informal hearing. Your written request for a hearing (also called an informal fact-finding conference) 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

Attachments: (2)

⁶ Some private consultants are affiliated with only one product brand and may not provide you with a complete list of possible designs.

Attachment 2
Date

Owner Name
Address
City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] County Health Department received your application for a sewage system repair permit which did not include supporting documentation from an AOSE/PE.⁷ Based on our site and soil evaluations (copy attached), the conditions on your lot do not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20, as amended July 1, 2000, the *Regulations*) for a gravity or non-pressure-dosed Septic Tank Effluent (STE, *Regulations*, § 594) system for the following reasons:

State reasons, such as insufficient depth of suitable soil above a limiting factor (SWT, rock, etc.), insufficient area, etc.

The repair system for your property must use a pressure dosed system,⁹ a system that provides secondary or better effluent¹⁰, or a system that provides both pressure dosing and secondary or better effluent [**Note: modify this paragraph to fit the specific situation**]. This requirement in the *Regulations* provides additional public health and groundwater protections where failed systems pose relatively high risks for human disease transmission.

Employees of the Virginia Department of Health (VDH) typically do not design sewage systems with SE 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 AOSE/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 all product manufacturers. You will need to retain the services of a qualified private designer to design your repair system. Currently, VDH recognizes PEs (licensed in the Commonwealth of Virginia) for any type of system design and AOSEs for certain system designs that do not require the practice of engineering.

⁷ AOSE/PE means a Professional Engineer (PE) working in consultation with an Authorized Onsite Soil Evaluator (AOSE) or an AOSE.

⁸ Septic Tank Effluent means "effluent characterized by a five-day biochemical oxygen demand between 120 and 200 mg/l; total suspended solids between 70 and 150 mg/l; fats, oils, and grease of 30 mg/l or less; and having no other toxic, hazardous, or constituents not routinely found in residential wastewater flows (*Regulations*, § 120)."

⁹ Pressure Dosing means any system under the *Regulations* that requires a pump to pressurize a dosing system or device. Examples include drip dispersal, drip irrigation, manifold systems, mound systems, and low pressure distribution systems, etc. The definition does not include gravity systems, systems that pump to a higher elevation (distribution box with or without enhanced flow), or systems that require a pump because the ground surface over the soil absorption area is higher than the elevation of the lowest fixture in the house.

¹⁰ Secondary Effluent means "effluent treated to reduce five-day biochemical oxygen demand to 30 mg/l or less, total suspended solids to 30 mg/l or less, and fats, oils, and grease to less than 5 mg/l (*Regulations*, § 120)."

The Virginia General Assembly passed a law, effective July 1, 2004, that provides an opportunity for you to receive a Waiver from the requirements for SE, pressure dosing, or both as long as your system was not installed illegally without a permit and as long as there was no requirement for these in your original permit and approval documents (Va. Code, § 32.1-164.1:1). I have determined that you are eligible for a Waiver from (PD or SE) if you choose to apply for it. **[Note: This paragraph will not apply in cases where the owner is not eligible for a waiver. The paragraph will need to be modified to fit specific situations where an owner may receive a waiver from one element, such as PD, but not from the other- see Flow Chart in Attachment 4]**

If you wish to receive the Waiver, please complete the enclosed Waiver Request, Agreement, and Waiver document (“Waiver”) and return it to this office with your AOSE/PE plans for the repair or replacement system. As soon as we receive this information, we will act accordingly and issue you a repair permit as soon as possible. **[Note: This paragraph is not applicable in cases where owner is not eligible for a waiver.]**

If you are signing the Waiver agreement you will need to have your signature notarized. This is a legal document and you should review it carefully. You may wish to seek legal advice from an attorney to explain what the Waiver means and its future consequences when you transfer the property to a new owner. The law requires that you record the Waiver in the land records of the clerk of the circuit court in the jurisdiction in which your property is located. A Waiver is only transferable between a husband and wife. **[Note: This paragraph is not applicable in cases where owner is not eligible for a waiver.]**

The Waiver and the operating permit for your system are both null and void immediately whenever your property is transferred to any person (or entity) other than your spouse (husband or wife). It is unlawful to operate an onsite sewage system without a valid operating permit (*Regulations*, § 240). This means that any new owner will not be able to lawfully occupy the dwelling/structure and operate the sewage system until he obtains a new operating permit. The new owner will need to apply for and obtain a new construction permit that complies with those parts of the *Regulations* that were waived (i.e. secondary treatment and/or pressure dosing) and any new requirements that may have been adopted after the Waiver was granted. After the upgrades are completed, then the operating permit for the system can be reinstated. You are required by law to disclose these conditions in writing to any and all potential purchasers or mortgage holders. *These requirements apply to your system, even if it does not appear to be failing at the time of transfer.* **[Note: This paragraph is not applicable in cases where owner is not eligible for a waiver.]**

Please remember to tell your AOSE/PE consultant if you are requesting a waiver so that he can submit plans that incorporate your wishes. VDH will not change your expert’s design and an AOSE/PE must approve the system’s final construction. **[Note: This paragraph is not applicable in cases where owner is not eligible for a waiver.]**

Please remember that VDH does not have the resources to consider, inform, and consult with you about all of the design options available in the marketplace for a repair. There are hundreds of design options and hundreds of products from which to choose within each possible design. Depending on your specific needs, please consider that VDH might recommend a system that would not meet your immediate or long-term interests because of our lack of resources to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves requests from product manufacturers so we cannot recommend one product over another just as we cannot design or recommend a specific proprietary pre-engineered system. A private consultant would not necessarily have VDH's limitations and can propose specific products and provide more in depth consultation.¹¹

Also remember that VDH cannot advise you about how a system under the Waiver might affect your ability to sell the property since you are required to upgrade the system at the time of property transfer. And VDH cannot advise you about liability issues should your system fail and adversely impact drinking water supplies. A system installed under the Waiver does not comply with the *Regulations* and the *Regulations* are written to provide the least intrusive methods to adequately protect groundwater supplies and public health. **[Note: This paragraph is not applicable in cases where owner is not eligible for a waiver.]**

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 established for repairing your failing system. Because your sewage system has failed, your sewage system operation permit is null and void in accordance with 12 VAC 5-610-340 of the *Regulations*. As I mentioned earlier in this letter, you are required to have an operating permit in order to use an onsite sewage system and I encourage you to complete the steps necessary to get a new operating permit as quickly as possible.

You have the right to challenge VDH's site and soil evaluations and the decisions we have made regarding your repair application (see the first and second paragraphs of this letter) by requesting an informal hearing. Your written request for a hearing (also called an informal fact-finding conference) 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

Attachments: (1 or 2 depending on whether owner is eligible for Waiver)

¹¹ Some private consultants are affiliated with only one product brand and may not provide you with a complete list of possible designs.

Attachment 3

REQUEST FOR WAIVER, RELEASE, HOLD HARMLESS
and INDEMNIFICATION AGREEMENT, & WAIVER

This document, which includes a REQUEST FOR WAIVER, a RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT, and a WAIVER (collectively, "AGREEMENT"), is made and entered into this _____ Day of _____, 2004, by and between [insert full legal name of Owner or Owners], his/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 the COMMONWEALTH OF VIRGINIA).

WHEREAS, OWNER is the owner of that certain parcel described as _____ [insert legal description of property] containing, among other improvements, an occupied structure consisting of _____ [describe occupied structure- i.e. four bedroom single family dwelling] (hereinafter "PROPERTY"); and

WHEREAS, the DEPARTMENT, in accordance with the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20 *et seq.*, as amended July 1, 2000, the REGULATIONS), has determined that the onsite sewage system serving the PROPERTY is failing and must be repaired or replaced; and

WHEREAS, the DEPARTMENT has determined that, under the REGULATIONS, the repair or replacement system must provide Secondary Effluent and/or Pressure Dosing [**Note to VDH Staff: modify this clause according to whether both SE and PD are required or whether one or the other is required- see Flow Chart in Attachment 4**] in order to adequately protect public health and ground and surface water resources; and

WHEREAS, § 32.1- 164.1:1 of the *Code of Virginia* provides that whenever any onsite sewage system is failing and the regulations for repairing such failing system 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, an owner may request a waiver (hereinafter "WAIVER") from the requirements of the REGULATIONS pertaining to Secondary Effluent and/or Pressure Dosing for a repair system; and

WHEREAS, the State Health Commissioner shall grant such WAIVER, provided that the owner's failing system was not installed illegally without a permit; and

WHEREAS, the DEPARTMENT has determined, and OWNER affirms, that the failing system currently serving the PROPERTY was not installed illegally without a permit, and

REQUEST FOR WAIVER

WHEREAS, OWNER, by executing this AGREEMENT, hereby requests that the State Health Commissioner grant the WAIVER provided at §32.1-164.1:1 B. of the *Code of Virginia* from the requirements for _____ Secondary Effluent and/or _____ Pressure Dosing [**Note to VDH Staff: modify this clause according to whether both SE and PD are required or whether one or the other is required- see Flow Chart in Attachment 4**].

WAIVER

NOW, THEREFORE, in exchange for the mutual promises contained herein, the parties agree as follows:

The WAIVER provided at §32.1-164.1:1 B. of the *Code of Virginia* is hereby granted and shall be effective 24 hours after OWNER provides certification to the DEPARTMENT that this AGREEMENT has been recorded in the land records of the Circuit Court having jurisdiction over the PROPERTY.

RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT

OWNER agrees to, and hereby does, release the COMMONWEALTH OF VIRGINIA from any and all claims, complaints, demands, actions, causes of action, liabilities, and obligations of whatever source or nature, 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 WAIVER, 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 COMMONWEALTH OF VIRGINIA 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 WAIVER.

OWNER also agrees to hold harmless and indemnify the COMMONWEALTH OF VIRGINIA for any sum of money or judgment against the COMMONWEALTH OF VIRGINIA, as well as costs and reasonable attorneys' fees incurred in the defense of any action arising out of or related to the WAIVER.

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 COMMONWEALTH OF VIRGINIA, 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 COMMONWEALTH OF VIRGINIA.

[Name]
District Health Director

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. OWNER furthermore understands and affirms that the DEPARTMENT cannot provide such in-depth consulting as OWNER might need or desire, and that it may be in OWNER's best interests to seek advice from competent private professionals to discuss the legal and financial considerations for all of the possible design options available in the marketplace. OWNER acknowledges and accepts that OWNER may receive an inferior design from the DEPARTMENT because the DEPARTMENT has limited resources for detailed consulting and because the DEPARTMENT cannot propose specific proprietary products which may benefit OWNER because of its regulatory relationship with manufacturers. OWNER acknowledges and understands that OWNER may receive a more complete and well-advised design if OWNER seeks advice from private consultants because private consultants are not subject to the same resource restrictions and regulatory relationships as the DEPARTMENT.

Understood and Accepted:

[Full Legal Name of Owner or Owners]

Date

COMMONWEALTH OF VIRGINIA

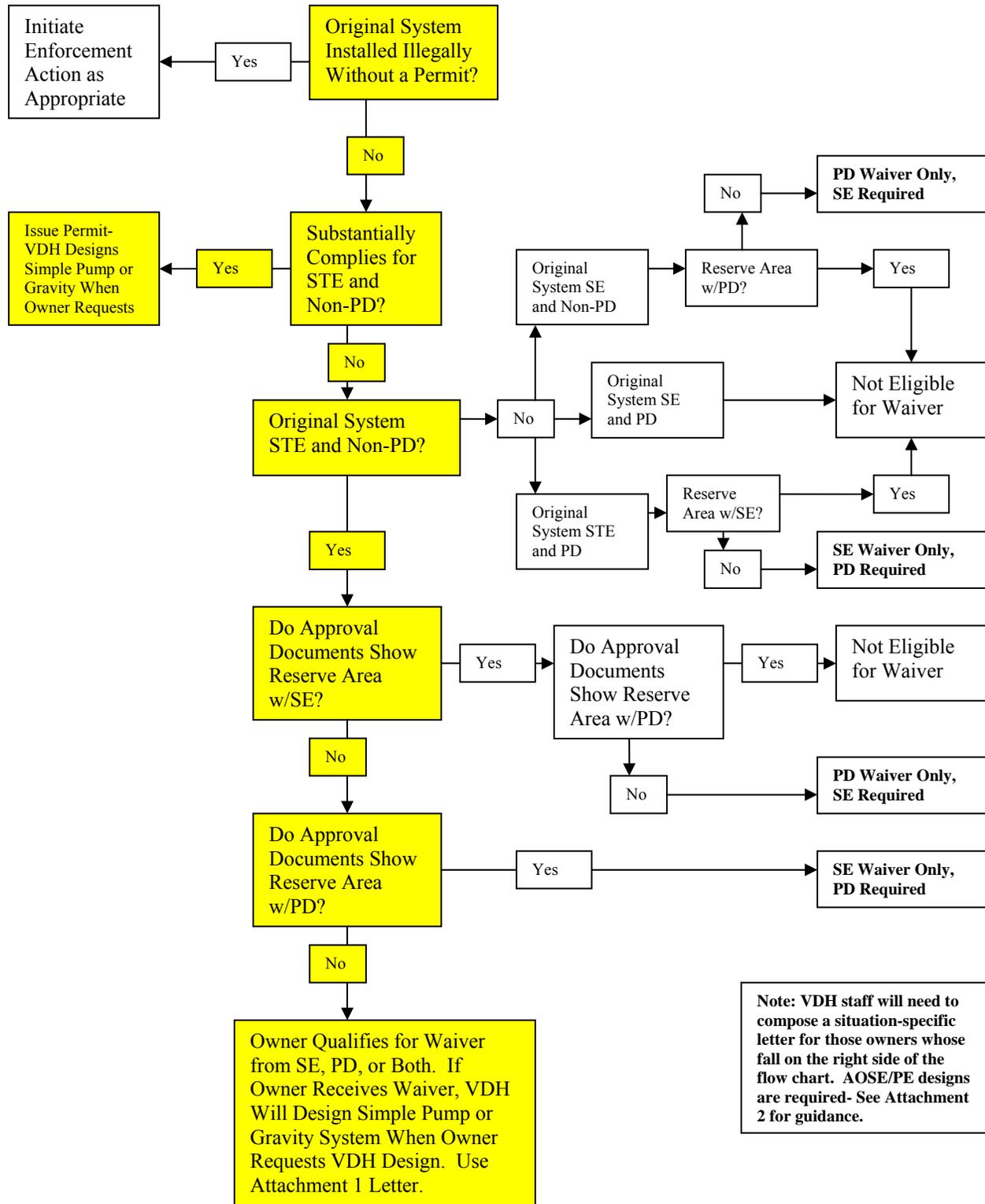
CITY / COUNTY OF _____.

On this the _____ day of _____, 2004, appeared before me _____ and _____ who affirmed that he/they have the authority to enter into this AGREEMENT and that the signatures thereto are their own.

Notary Public

My Commission expires:

Attachment #4: Flow Chart
 Note: Highlighted boxes indicate common paths for most requests



Note: VDH staff will need to compose a situation-specific letter for those owners whose fall on the right side of the flow chart. AOSE/PE designs are required- See Attachment 2 for guidance.

Note: See GMP 125 for guidance regarding non-engineer designs.