

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

Date: April 16, 2019
Time: 10 am to 2 pm
Location: James Madison Building
5th Floor Conference Room
109 Governor Street
Richmond, Virginia 23219

Remote Locations: Middlesex Health Department (MHD)
2780 General Puller Highway
Saluda, VA 23149

Franklin County Health Department (FHD)
365 Pell Avenue
Rocky Mount, VA 24151

Danville Health Department (DHD)
326 Taylor Drive
Danville, VA 24541

SHADAC Members

Mike Lynn, Chairman – Home Builders Association of Virginia
Curtis Moore – Virginia Onsite Wastewater Recycling Association
Shaun McGuigan – Manufacturer (sitting in for Colin Bishop)
Valerie Rourke – Department of Environmental Quality
Matt Tolley – Virginia Association of Professional Soil Scientist (sitting in for Bill Sledjeski)
Alan Brewer – Virginia Association of Counties
James Grandstaff – Virginia Water Environment Association
Bill Timmins – Citizen at large (remote from FHD)
David Fridley – Virginia Environmental Health Associations (sitting in for Adam Feris, remote from MHD)
Lance Gregory – Virginia Department of Health

VDH Staff and Members of the Public

Scott Vogel	Michelle Ruff	Scott Curry	Anthony Creech
John Ewing	Jason Hackler	Danna Revis	

Remote from MHD

Pat Duttry	Mark Brann
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Remote from FHD

Darrin Doss

Remote from DHD

Briana Bill

Ken Vipperman

Administrative

1. Welcome

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

2. Approve agenda. (5 minutes)

Mr. Moore moved to approve the agenda.

Mr. Brewer seconded the motion.

All members were in favor of the motion.

3. Review summary from December 5, 2018 meeting.

Mr. Moore moved to approve the summary.

Mr. Brewer seconded the motion.

All members were in favor of the motion.

4. SHADAC Representatives – Request to Organizations,

Mr. Gregory commented that VDH sent letters on April 1, 2019, to SHADAC organizations with appointees to nominate representatives to the SHADAC.

Public Comment Period

There were no public comments.

Standing Agenda Items

1. Issues related to internal VDH policies and processes.

Chairman Lynn asked whether there were any internal VDH policies or processes that required discussion.

Mr. Ewing noted that not all local health department are performing condition assessments for repairs.

Mr. Gregory noted that VDH provided training to local health departments on Guidance Memorandum and Policies (GMP) 2017-02, including the need to perform condition assessments on repair applications.

Mr. Moore noted that people that are doing inspections are reluctant to do condition assessments, such as pumpers conducting real estate inspections.

Chairman Lynn said he is trying to get a clear idea of what the health department can make you do, and what is a voluntary upgrade; examples being replacing tees in septic tanks, or replacing tanks that are not water-tight.

Mr. McGuigan commented that VDH needs to update its database to include new products that have been approved, as some are not included in the database.

Mr. Gregory commented that he would follow up with the Division of Data Management and Process Improvement on that issue.

Chairman Lynn then asked Mr. Gregory to provide an update on legislation from the 2019 General Assembly Session.

Mr. Gregory discussed six bills. House Bill 1949 and House Joint Resolution 641 dealt with rainwater harvesting. Legislation from 2018 requires VDH to develop regulations for rainwater harvesting. VDH currently has a workgroup formed to assist with developing regulations. House Bill 1949 would have required VDH to include human consumption in the regulations; however, the bill was tabled. House Joint Resolution 641 requires VDH to evaluate standards for human consumption as part of the regulatory development, among other elements, and report back to the General Assembly on the agency's progress.

House Bill 2358 and Senate Bill 1414 dealt with the Hampton Roads Sanitation District's Sustainable Water Initiative for Tomorrow (SWIFT) project, creating an independent laboratory to monitor the project.

House Bill 2322 requires VDH to develop a plan to transfer oversight and enforcement of septic pump out programs in the Three Rivers and Eastern Shore Health Districts from localities to VDH, and report back to the General Assembly.

House Bill 2811 amended §58.1-3660 of the Code of Virginia to add the VDH to the list of state certifying authorities that can certify water pollution control equipment and facilities to the Department of Taxation. The bill limits VDH certification to onsite systems serving 10 or more homes that use nitrogen-reducing processes, and are constructed at least partially with public funds.

Old Business

1. Hardship Guidelines and Petition for Services

The SHADAC discussed the second draft Hardship Guidelines related to the transition of onsite sewage system and private well evaluation and designs. Prior to reviewing the draft guidelines, Chairman Lynn shared with the committee email correspondence from three private sector providers: Jim Slusser, Jeff Walker, and Bob Marshall (see attached).

Mr. Gregory then reviewed the draft guidelines with the committee. Comments from the committee on the draft guidelines included the following:

- Committee members notes several general typographical errors.
- Rather than re-evaluating the proposed growth factor in the “Number of Private Sector Providers” on an annual basis, put a letter designation for the growth factor and then insert increases in the growth factor for the designation (i.e. 1.25 in the first year, 1.5 in the second year, 1.75 in the third year, and 2.0 in the fourth year).
- Re-insert the example for evaluating “Number of Private Sector Providers”.
- Provide clarify for how revocation or suspension of licenses will be handled in evaluating the number of private sector providers working in an area.
- Prefer option three in the “Availability of Private Sector Service Providers” section; property owner has skin in the game. Should also include option for electronic submission.
- Options under the “Availability of Private Sector Service Providers” section seems onerous; the responsibility should be on the property owner not the health department.
- Prefer option one in the “Availability of Private Sector Service Providers” section and have VDH verify each request.
- Felt like private sector and local health departments got along better when local health departments held meetings with service providers. Could use those meetings as a means to verify availability.
- Monthly review is the longest you could go looking at backlogs; annually would be too long.
- Wonder whether the “Availability of Private Sector Service Providers” section works at cross purposes to the bill. Bill says VDH has to consider availability of service provider; seem like this gets very complicated. Suggest removing this section.
- If a property owners has difficulty receiving timely services for repair evaluation and design services, they could request further consideration for a hardship.
- Concerned about option 1, 2, and 3. VDH would be trying to get to the industry backlog in a locality. The owner could just contact the two really busy service providers. Also concerned that 1, 2, and 3 is a backlog for a specific client, but those are not a reflection of the actual industry backlog.
- Public and non-profit funded projects should not be set out as a specific hardship. These project will likely fall under means testing.
- Modify the data review period for the guidelines to May 1st to April 30th.
- The proposed guidelines will not likely transition services to the private sector in areas where applications are primarily bare applications. What is VDHs plan to transition services in those areas?

- What happens after July 1, 2023. It might help to explain when we would stop doing the annual review; i.e. all services have transitioned.

New Business

1. Regulation Updates

a. Regulations for Alternative Onsite Sewage Systems (AOSS Regulations)

Mr. Gregory informed the committee that VDH has submitted a Notice of Intended Regulatory Action (NOIRA) for the AOSS Regulations. The NOIRA opens up the entire regulations and was based on feedback during previous workgroup and public meetings.

b. Alternative Onsite Soil Evaluator Regulations

Mr. Gregory informed the committee that VDH will be submitting a final regulatory action to repeal the Alternative Onsite Soil Evaluator Regulations. The program was transition to Department of Professional and Occupational Regulations; VDH no longer has authority to implement the regulations.

c. Fee Regulations

Mr. Gregory informed the committee that VDH will be seeking approval of an exempt regulatory action to incorporate new fees in the budget bill into the Fee Regulations.

d. Private Well Regulations

Mr. Creech informed the committee that staff would be presenting proposed revisions to the Private Well Regulations at the next Board of Health meeting. The proposed revisions are based on input from the Private Well Regulation workgroup.

e. Rainwater Harvesting Regulations

Mr. Creech informed the committee that VDH has formed a workgroup to assist in the development of rainwater harvesting regulations. He invited committee members to attend workgroup meetings. He noted that a major point of discussion with the workgroup has revolved around human consumption of harvested rainwater.

Mrs. Rourke suggested reviewing San Francisco's program for rainwater harvesting.

Mr. Moore asked whether the regulations would require a second source if rainwater is used for human consumption.

Mr. Brewer asked whether the regulations will require ongoing maintenance.

f. Sewage Handling and Disposal Regulations

Mr. Gregory commented that VDH would be seeking input from the SHADAC later in 2019 to assist in the development of a NOIRA for the Sewage Handling and Disposal Regulations.

2. Updating GMP 2010-01 – Verifying licensure

Mr. Gregory asked for thoughts from the committee on areas for clarification regarding VDHs interactions with licensure types, for example installation of systems by unlicensed contractors.

Mr. Ewing commented that if VDH approves a system then DPOR think its okay.

Chairman Lynn asked whether the DPOR Board has authority to take action against unlicensed contractors.

Mr. McGuigan commented that without the license number the installation is incomplete.

Chairman Lynn commented the he doesn't think VDH has a right to issue a construction permit to anyone but a licensed contractor.

Mrs. Revis commented that VOWRA strongly believes that only licensed contractors should be approve.

Mr. Moore commented that his understanding is if you build and operate a sewerage system, there would be conditions that require a licensed operator. He suggested looking at DEQs model.

Mr. Moore commented that he can write an operation and maintenance manual that requires twice a year inspections, but if VDH is not willing to enforce that requirement then it is a worthless document.

Mr. Moore also asked how VDH gives a permit to pumpers without verifying that they have a license.

Mr. Fridley noted that it really sticks out that VDH requires a license for everything but installers. Issue has been lack of authority.

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Agenda**

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Saluda, VA 23149

Franklin County Health Department
365 Pell Avenue
Rocky Mount, VA 24151

Danville Health Department
326 Taylor Drive
Danville, VA 24541

Administrative (20 minutes)

1. Welcome (5 minutes)
2. Approve agenda. (5 minutes)
3. Review summary from December 5, 2018 meeting. (5 minutes)
4. SHADAC Representatives – Request to Organizations (5 minutes)

Public Comment Period (15 minutes)

Standing Agenda Items (20 minutes)

1. Issues related to internal VDH policies and processes. (20 minutes)

Break (10 minutes)

Old Business (50 minutes)

1. Hardship Guidelines and Petition for Services (60 minutes)

Break (10 minutes)

Old Business Continued (30 minutes)

4. Hardship Guidelines and Petition for Services (30 minutes)

Break (10 minutes)

New Business (75 minutes)

1. Regulation Updates
 - a. Regulations for Alternative Onsite Sewage Systems (5 minutes)
 - b. Alternative Onsite Soil Evaluator Regulations (5 minutes)
 - c. Fee Regulations (10 minutes)
 - d. Private Well Regulations (20 minutes)
 - e. Rainwater Harvesting Regulations (5 minutes)
 - f. Sewage Handling and Disposal Regulations (5 minutes)
2. Updating GMP 2010-01 – Verifying licensure (25 minutes)

DRAFT



Gregory, Lance <lance.gregory@vdh.virginia.gov>

RE: second draft Hardship Guidelines

1 message

jslusser@aose211.com <jslusser@aose211.com>

Mon, Apr 15, 2019 at 8:57 PM

To: Michael Lynn <mlynn@ses-company.com>, Jeff Walker <walker@swva.net>, bob marshall <cloverleaf1@verizon.net>

Cc: Joel Pinnix <joelpinnix@obsidianengineering.com>, "C. Beatley" <chrisbeatley@aol.com>, "Gregory, Lance" <lance.gregory@vdh.virginia.gov>

Mr. Lynn,

Please find my comments as attached. Can you or Lance provide the number of years each industry representative has occupied SHADAC? Thanks

--

Jim Slusser

----- Original Message -----

Subject: RE: second draft Hardship Guidelines

From: Michael Lynn <mlynn@ses-company.com>

Date: Mon, April 15, 2019 8:49 am

To: Jeff Walker <walker@swva.net>, 'bob marshall'
<cloverleaf1@verizon.net>Cc: 'Jim Slusser' <jslusser@aose211.com>, Joel Pinnix
<joelpinnix@obsidianengineering.com>, "'C. Beatley'"
<chrisbeatley@aol.com>, "'Gregory, Lance'"
<lance.gregory@vdh.virginia.gov>

Jeff:

I have forwarded your comments as well and Bobs to HBAV for consideration.

Thanks

Mike

From: Jeff Walker <walker@swva.net>**Sent:** Friday, April 12, 2019 10:49 PM**To:** 'bob marshall' <cloverleaf1@verizon.net>; Michael Lynn <mlynn@ses-company.com>**Cc:** 'Jim Slusser' <jslusser@aose211.com>; Joel Pinnix <joelpinnix@obsidianengineering.com>; 'C. Beatley'
<chrisbeatley@aol.com>; 'Gregory, Lance' <lance.gregory@vdh.virginia.gov>**Subject:** RE: second draft Hardship Guidelines

Mike, consider sharing the attached map with the committee.

It reveals licensed OSE's are distributed in overlapping 50 mile radiuses blanketing virtually the entire state (but for the shaded regions, one being on urban sewer, and the others wilderness enclaves near Cumberland Gap and the GW Forest). VDH seems focused on capturing a certain market share, indeed they remain the provider of first resort rather than last in vast regions of the state (see Appendix D below).

SHAC should consider rejecting this policy, and recommend a substitute indexed to the unused capacity in a future competitive market place. It is not a public health objective to determine a means for consultants to grow a market, however for VDH to continue monopolizing the provision of conventional systems while discrediting advanced systems should lead us all to question how the persistence of dual standards protects public health in the absence of regulatory oversight.

We know from VDH's own data sheets that the average productivity of an consulting OSE is 84 permits/year, there is considerable unused capacity e.g. professionals who are ready and able to take on the difference between our current activity, and the mean.

VDH is creating hardship by clinging to "their" market at public subsidy, and displacing competition. Meanwhile it seems attrition and training shortfalls find it's staff is unable to conform to the expectations of DPOR, recall Roadcap's pronouncement that *almost* 25% of his staff was able to render a scale site plan. If any "policing" is needed it's in failure analysis and projection of capacity to support repairs of legacy systems, the majority of which were designed at public expense by EHS and generally lack documentation.

I am concerned that SHAC is unable to recognize that the actual number of new house starts in rural Virginia is in a statewide decline, many counties having less than 40 permits/year, and yet this absurd hardship policy suggests VDH is committed to funding positions for which they are unable to field qualified staff. Far better for consideration of a voucher system, or an RFP outsourcing repair or low income applicants to professional firms.

I hope you will provide support for a rational discussion at SHAC questioning downtown's fantasy world. If as some believe the central focus is to maintain control, not environmental health then we have a far greater problem. For contractors or developers who are accustomed to leaning on EHS to provide an outcome there are bound to be greater problems coming,
Jeff

From: bob marshall <cloverleaf1@verizon.net>

Sent: Friday, April 12, 2019 9:37 PM

To: Mike Lynn <mike@ses-company.com>

Cc: Jim Slusser <jslusser@aose211.com>; Jeff T. Walker <walker@swva.net>

Subject: second draft Hardship Guidelines

Chairman Lynn,

I'll just leave it for you this way,...the onsite industry is yours to lose! These second draft *Hardship Guidelines* represent an obvious *restraint of trade* to say the very least, and the level of agency meddling probably defies any reasonable expectation of constitutionality. It's difficult for me to understand how you're advising the Home Builders Association of Virginia (HBAV) to support this rubbish.

Sincerely,
Bob Marshall

AOSE Lic #: 1940-001373

AOSSO Lic #: 1942-001201

Cloverleaf Env. Cnslt., Inc.


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FX: (540) 955-1013

 **gmp2019_shadac.pdf**
375K

HB 888 of the 2018 Virginia General Assembly session originated within the Virginia Department of Health. HB 888 was lobbied by Virginia Department of Health while participating in the onsite sewage system evaluation and design market. The proposed Virginia Department of Health GUIDANCE MEMORANDA AND POLICY (GMP) 2019-01 is a sham policy.

Virginia Department of Health stakeholder demands of free services, to be a government mandated service, despite non-acknowledgement by the Virginia General Assembly. Through benign neglect, Virginia Department of Health has failed to embrace more broad issues of promoting and managing public health as identified by the CDC 10 Essential Public Health Services. VDH necessity to provide design services is not dissimilar to Stockholm Syndrome sufferers, which appears irrational at best.

...“Petition to the government for the redress of grievances” –*Article I, Section 12 Virginia Constitution*

VDH appears to have unprecedented market share in each of the following counties identified as qualifying for hardship. Should VDH wish to define a market, we should utilize standard terms for qualifying or disqualifying potential market areas. VDH coined the following equation $(P \times M)1.25 - W = X$ (future reference as “equation”), where as

P = Number of private sector providers that submitted at least five evaluations and designs within the locality over the previous state fiscal year (July 1st to June 30th).¹

A = Average number of evaluations and designs per private sector provider submitted within the region over the previous state fiscal year (July 1st to June 30th) that resulted in a permit. (A map showing the specific regions is provided below; Map 1.)

1.25 = Private sector growth factor.

W = Total number of private sector evaluations and designs submitted within the locality over the previous state fiscal year (July 1st to June 30th) that resulted in a permit.

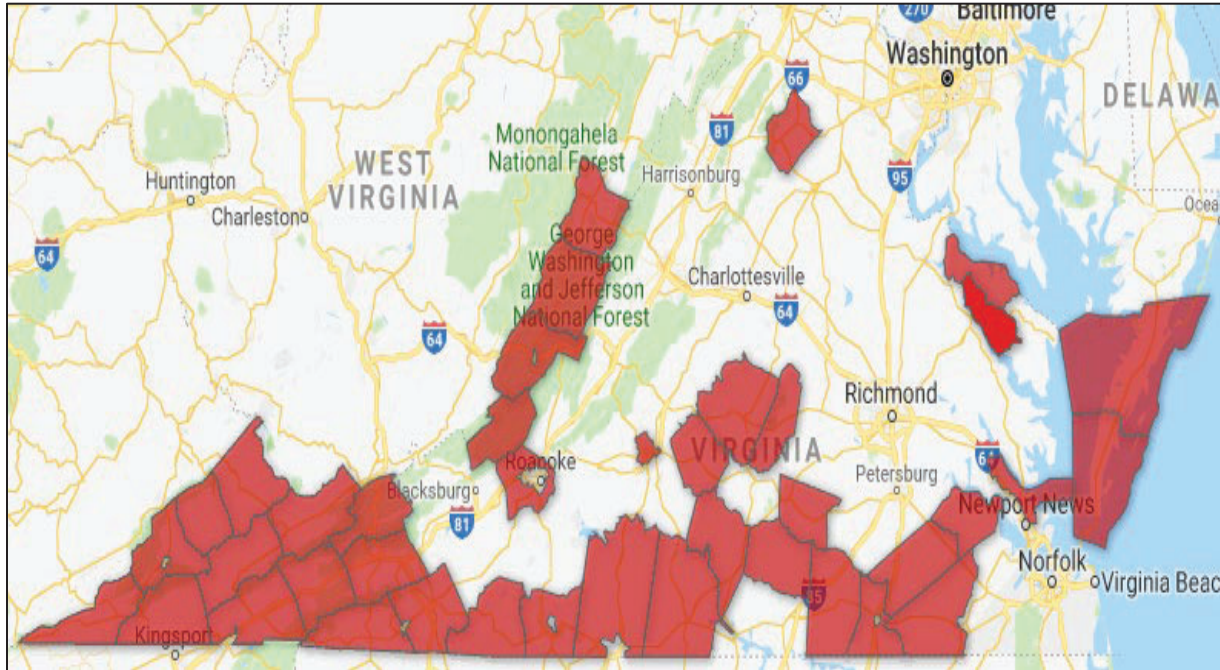
X = Estimated number of additional evaluations and designs that could be provided by the private sector.

The data clearly shows where VDH has entrenched markets (Appendix D) despite the equation purporting to identify private sector capacity for growth. **Sketchy** would best describe VDH actions as to understanding private sector capacity in any market. VDH cannot pursue public health outcomes while participating in the very market they purport to regulate.

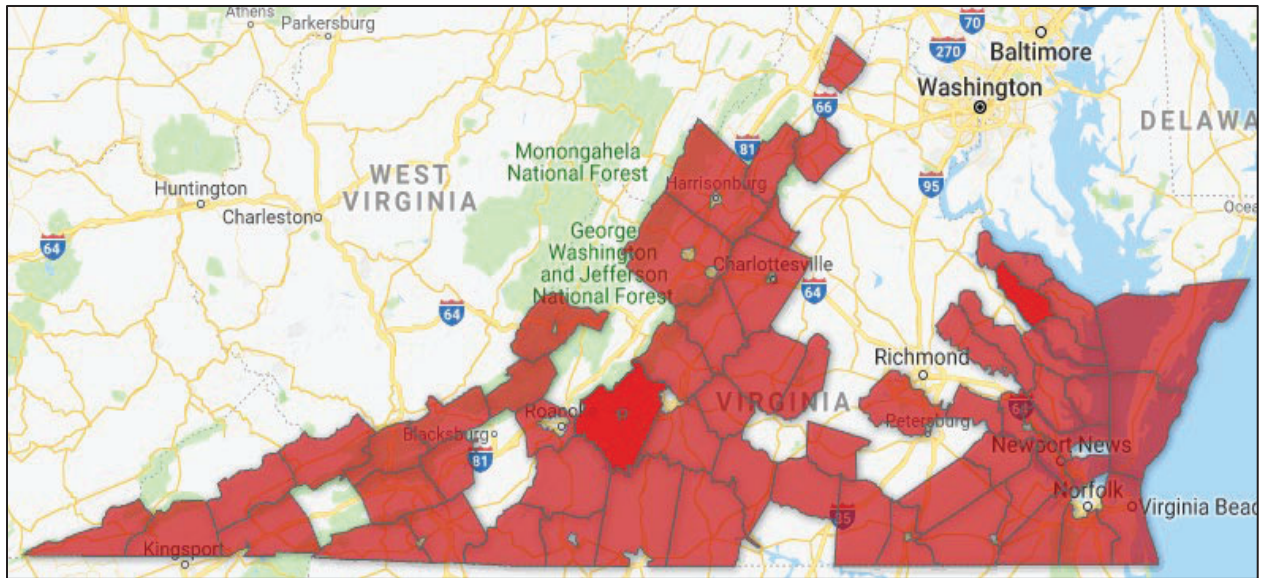
¹ For onsite sewage system construction services, “private sector providers” will include Onsite Soil Evaluators (OSE) and Professional Engineers (PE). For private well construction services, “private sector providers” will include OSEs, PEs, and Water Well System Providers. For safe, adequate, and proper evaluations, “private sector providers” will include OSEs, PEs, Onsite Sewage System Installers, Onsite Sewage System Operators, and individuals certified by the National Sanitation Foundation (or equivalent).

Appendix D

Localities with an Insufficient Number of Service Providers – Onsite Sewage System Construction



Localities with an Insufficient Number of Service Providers – Private Well Construction



Will Virginia Department of Health begin to purchase well drilling equipment to service those areas where an insufficient number of service providers exist for private well construction?

MARKET SHARE BY COUNTY (Fiscal Year 2018)

County	State Market Share %	Private Market Share %	County	State Market Share %	Private Market Share %
Accomack	54.47%	33.42%	Wythe County	94.83%	5.17%
Alleghany	64.29%	21.43%	York	55.56%	44.44%
Appomattox	38.53%	59.63%	York County	50.00%	50.00%
Bath	60.00%	40.00%			
Bland County	100.00%	0.00%			
Brunswick	74.51%	23.53%			
Brunswick Co.	90.91%	9.09%			
Buchanan	93.33%	0.00%			
Buckingham	87.80%	12.20%			
Carroll County	83.06%	16.94%			
Charlotte	80.00%	14.55%			
Craig	57.89%	31.58%			
Cumberland	56.52%	43.48%			
Dickenson	85.19%	3.70%			
Grayson County	86.67%	10.67%			
Greensville	37.50%	62.50%			
Halifax	81.21%	17.45%			
Henry	98.89%	1.11%			
Highland	54.55%	36.36%			
Lee County	96.10%	0.00%			
Lunenburg	69.39%	30.61%			
Lynchburg	76.00%	20.00%			
Northampton	76.27%	19.49%			
Nottoway	43.24%	45.95%			
Patrick	91.89%	8.11%			
Pittsylvania	82.21%	17.79%			
Rappahannock	78.21%	21.79%			
Richmond	57.69%	36.54%			
Roanoke	75.64%	20.51%			
Russell	92.21%	1.30%			
Scott County	83.33%	6.25%			
Smyth County	98.57%	0.00%			
Southampton	87.04%	11.11%			
Surry	42.86%	48.57%			
Sussex	46.88%	46.88%			
Tazewell	94.12%	1.47%			
Washington County	87.85%	6.63%			
Westmoreland	75.49%	18.63%			
Wise County	91.40%	0.00%			

James B Slusser



Gregory, Lance <lance.gregory@vdh.virginia.gov>

RE: second draft Hardship Guidelines

1 message

Jeff Walker <walker@swva.net>

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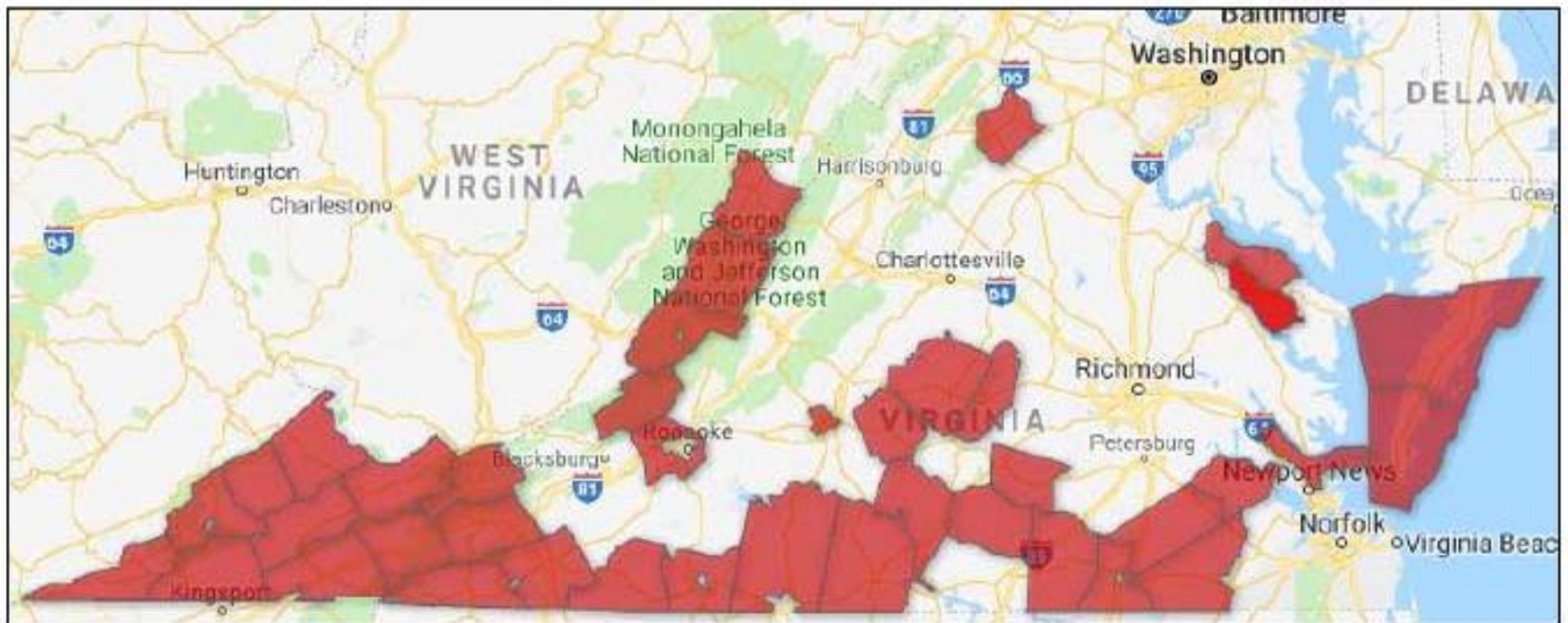


List of Localities Meeting Hardship

Accomack	Alleghany	Appomattox	Bath
Bland	Brunswick	Buchanan	Buckingham
Carroll	Charlotte	Craig	Cumberland
Dickenson	Grayson	Greensville	Halifax
Henry	Highland	Lee	Lunenburg
Lynchburg	Northampton	Nottoway	Patrick
Pittsylvania	Rappahannock	Richmond Co.	Roanoke Co.
Russell	Scott	Smyth	Southampton
Surry	Sussex	Tazewell	Washington
Westmoreland	Wise	Wythe	York

Jeff

From: bob marshall <cloverleaf1@verizon.net>
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List of Localities Meeting Hardship

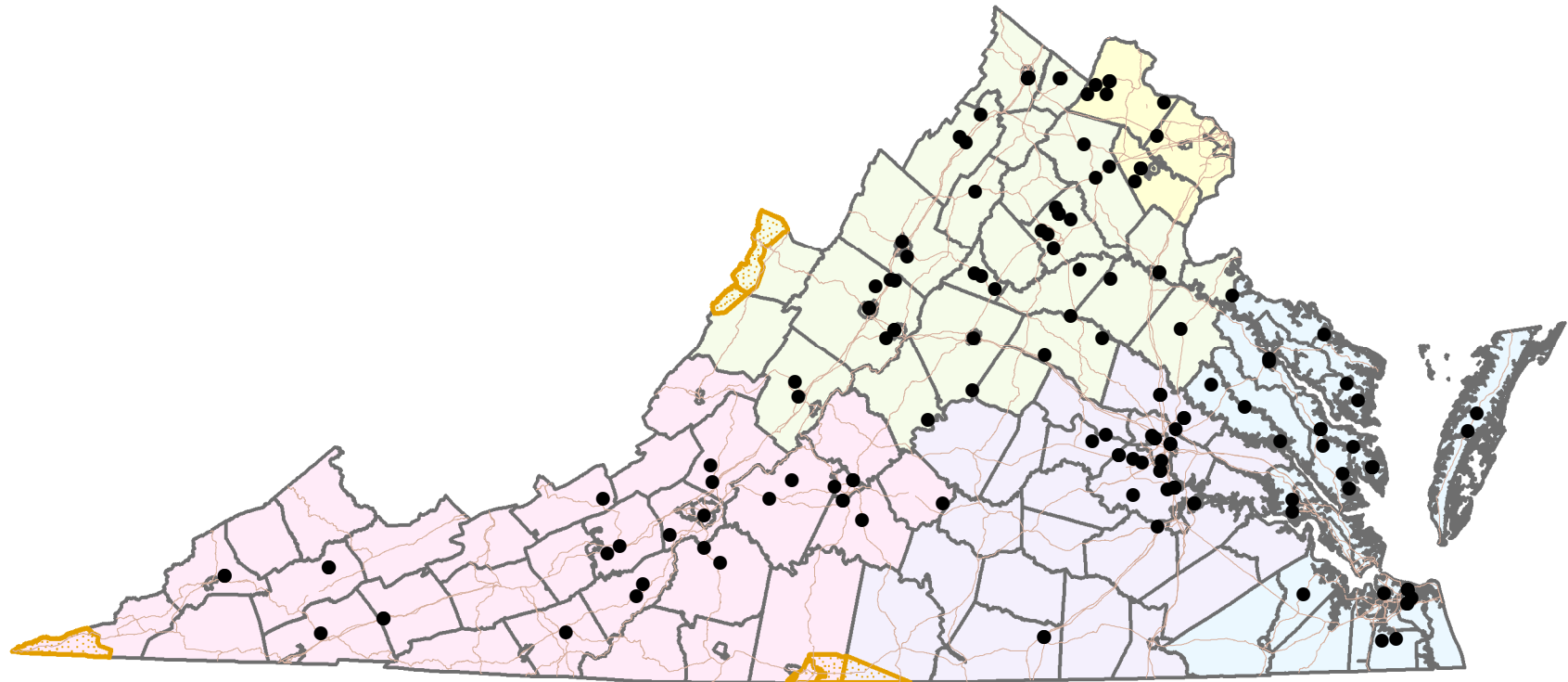
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Russell
Surry
Westmoreland

Alleghany
Brunswick
Charlotte
Grayson
Highland
Northampton
Rappahannock
Scott
Sussex
Wise

Appomattox
Buchanan
Craig
Greensville
Lee
Nottoway
Richmond Co.
Smyth
Tazewell
Wythe

Bath
Buckingham
Cumberland
Halifax
Lunenburg
Patrick
Roanoke Co.
Southampton
Washington
York

VDH Hardship Guideline Regions with No OSE/ PE Participation



VDH Hardship Guideline Regions

- Central
- Tidewater
- Northwest
- Southwest
- No VA

● OSE/PE Business Locations

▨ No OSE/ PE within 50 Miles

*OSE-PE Data Source: Virginia Department of Health.
VDH disclosure: This is not a complete list of all OSEs and PEs.
The list of their contact information is compiled from information
provided to the Virginia Department of Health by the
individual OSE/PE.*

July 1, 2019

MEMORANDUM

TO: District Health Directors
Environmental Health Managers
Office of Environmental Health Services Staff
Onsite Soil Evaluators
Professional Engineers
Onsite System Operators and Installers
Water Well System Providers

GMP #2019-01

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

THROUGH: Allen Knapp, Director
Office of Environmental Health Services

FROM: Lance Gregory, Director
Division of Onsite Sewage and Water Services, Environmental Engineering,
and Marina Programs

SUBJECT: GUIDANCE MEMORANDA AND POLICY (GMP) 2019-01
House Bill 888; Hardship Guidelines

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

SCOPE:

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

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

AUTHORITY:

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

BACKGROUND:

VDH staff have historically served as the primary provider of site and soil evaluations and designs in the Commonwealth for onsite sewage systems and private wells. However, several pieces of legislation approved in the 1990's created a process for VDH to accept evaluations and designs from private sector service providers. Since that time, two overarching principles have emerged: VDH should continue providing regulatory oversight; and VDH should increase private sector participation to the extent possible.

Over time, and without a specific statutory mandate to require private evaluations and designs, the use of private sector service providers gained broad acceptance in many parts of the Commonwealth.

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

testing and the development of guidelines to address situations in which owners could demonstrate a hardship in obtaining private sector services to ensure access to onsite sewage system and private well evaluation and design services for all Virginians.

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

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

EXCLUSIONS FROM MEANS TESTING AND HARDSHIP GUIDELINES

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

Evaluations and design types requiring private sector design services prior to July 1, 2018, by VDH policy are ineligible for VDH services. These services include evaluation or design for: non-residential onsite sewage systems; onsite sewage systems with a design flow over 1,000 gallons per day; alternative onsite sewage systems; alternative discharging sewage systems; and onsite sewage system designs requiring the services of a professional engineer.

MEANS TESTING:

Beginning July 1, 2019, and until June 30, 2020, property owners that submit a complete application with a household income at or below 400 percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services (federal poverty guidelines)

may receive VDH evaluation and design services for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165). Property owners seeking such services must first petition VDH to provide services using the Petition for VDH Services Form (Appendix A). Means testing of the property owner's income shall follow the same procedure as the determination of income eligibility for fee waivers (see VDH's Eligibility Guidance Document for the Regulations Governing Standards & Charges for Medical Care Services to Individuals).

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

HARDSHIP GUIDELINES:

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

A. Owners Eligible for Fee Waivers for Construction Permits, Repair Permits, and Pit Privies.

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

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

Eligibility Guidance Document for the Regulations Governing Standards & Charges for Medical Care Services to Individuals).

B. Replacement Wells and Well Abandonments.

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

C. Safe, Adequate, and Proper Evaluations.

Any property owner seeking a safe, adequate, and proper evaluation for a conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165) shall be eligible to receive VDH evaluation services from July 1, 2019 to June 30, 2020. Over this period, VDH will use improved data collection regarding the number of safe, adequate, and proper evaluations conducted by private sector service providers to inform necessary revisions to the Hardship Guidelines.

D. Number of Private Sector Providers.

Any property owner seeking evaluation and designer services in a locality with an insufficient number of private sector service providers shall be eligible to receive VDH evaluation and design services. A locality will be deemed to have an insufficient number of private sector service providers when the number of bare applications received in the locality over the previous state fiscal year (July 1st to June 30th) that resulted in the issuance of a permit exceeds the estimated number of additional designs that the private sector could provide in that locality. Once a locality is determine to have a sufficient number of private sector services provides, it shall maintain that designation. VDH will estimate the number of additional designs that the private sector could provide in a locality by using the following equation:

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

P = Number of private sector providers that submitted at least five evaluations and designs within the locality over the previous state fiscal year (July 1st to June 30th).³

A = Average number of evaluations and designs per private sector provider submitted within the region over the previous state fiscal year (July 1st to June 30th) that resulted in a permit. (A map showing the specific regions is provided below; Map 1.)

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

³ For onsite sewage system construction services, “private sector providers” will include Onsite Soil Evaluators (OSE) and Professional Engineers (PE). For private well construction services, “private sector providers” will include OSEs, PEs, and Water Well System Providers. For safe, adequate, and proper evaluations, “private sector providers” will include OSEs, PEs, Onsite Sewage System Installers, Onsite Sewage System Operators, and individuals certified by the National Sanitation Foundation (or equivalent).

1.25 = Private sector growth factor.

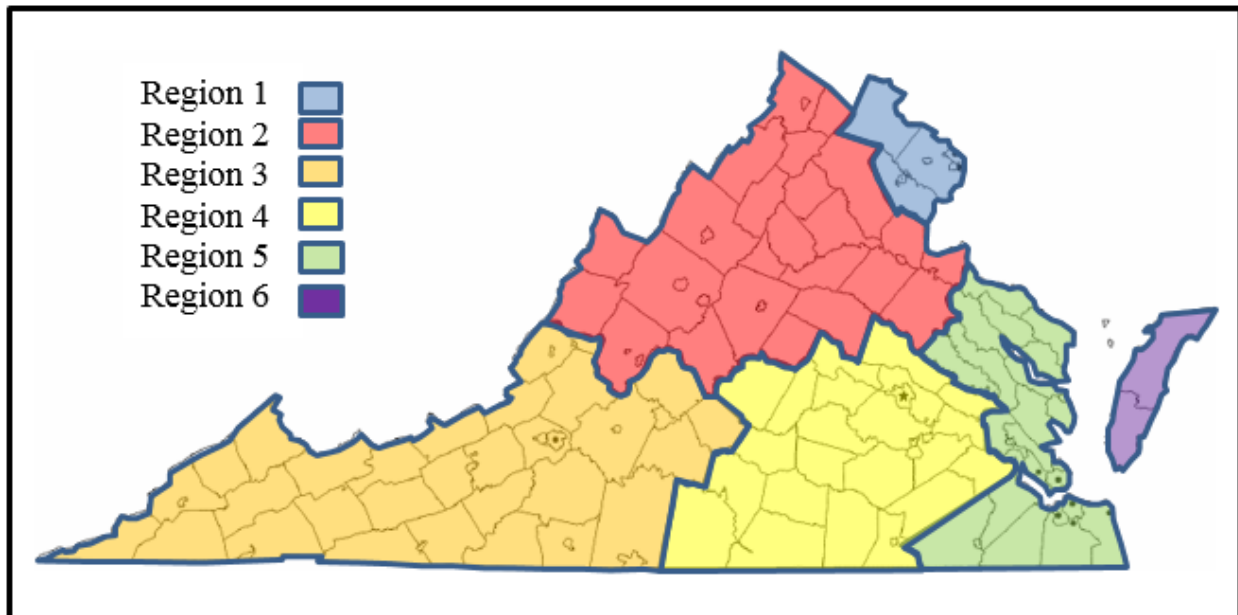
W = Total number of private sector evaluations and designs submitted within the locality over the previous state fiscal year (July 1st to June 30th) that resulted in a permit.

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

Any locality receiving 10 or fewer total applications over the previous state fiscal year (July 1st to June 30th) will be determined to have a sufficient number of private sector service providers.. Any locality that receives more than 10 total applications over the previous state fiscal year (July 1st to June 30th), but has less than two private sector service providers submitting at least five evaluations and designs each in the previous state fiscal year (July 1st to June 30th) will be determined to have an insufficient number of private sector service providers.

VDH will use the agency's statewide environmental health database to determine P, A, and W. For determining the average number of private sector designs, VDH will use Map 1 to set each region for review, and will include only private sector providers submitting at least 10 evaluations and designs within the region over the previous state fiscal year (July 1st to June 30th). The equation will be run separately for onsite sewage system evaluations and designs, and private well evaluations and designs. Therefore, it may be determined that a locality has an insufficient number of private sector service providers for one service, but an adequate number of private sector service providers for the other.

Map 1: Service Provider Regions



VDH will post a list of localities (independent cities and counties) with an insufficient number of private sector services providers on the agency website. The list will be updated annually using information from the agencies statewide environmental health database for the

previous state fiscal year (July 1st to June 30th) and posted no later than July 15th. A copy of the list is included in Appendix D.

Private sector service providers that receive a disciplinary action, that is not a revocation or suspension, against their license from the Department of Professional and Occupational Regulations (DPOR) will not be counted towards the number of private sector providers submitting evaluations and designs within a locality the state fiscal year (July 1st to June 30th) in which the disciplinary action was in effect by DPOR.

E. Availability of Private Sector Service Providers.

Owners shall qualify for a hardship to receive evaluation and design services for new onsite sewage systems serving a principal place of residence when a private sector provider is not available to conduct an initial site visit within 15 business days of the date of the owners petition for services to the local health department. Owners shall qualify for a hardship to receive evaluation and design services for new private wells when a private sector service provider is not available to conduct an initial site visit within 15 business days of the date of the owners petition for services to the local health department. Owners shall qualify for a hardship to receive evaluation and design services to repair onsite sewage systems when a private sector provider is not available to conduct an initial site visit within five business days of the date of the owners petition for services to the local health department. Owners shall qualify for a hardship to receive safe, adequate, and proper evaluation services (as required by §32.1-165) when a private sector provider is not available to conduct an initial site visit within 15 business days of the date of the owners petition for services to the local health department. Availability is based on the private sector provides ability to conduct an initial site visit, and does not include any delays resulting from actions required to be completed by the owner (e.g. surveying the property) prior to the initial visit.

Comments on the First Draft Hardship Guidelines were wide ranging on the appropriate means for VDH to verify that private sector service providers are not available. To assist in VDH's determination for the best course of action, the Second Draft Hardship Guidelines provide several potential options. We greatly appreciate your input on the strengths and weaknesses of each of these options.

Option 1:

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

Option 2:

Property owners must contact all private sector providers working within the applicable locality prior to petitioning VDH for services. The owner must provide the names of the private sector providers contacted on the Petition for VDH Services Form and the timeline provided.

Option 3:

Property owners must contact at least two private sector providers prior to petitioning VDH for services, and must obtain a written statement from the service provider verifying that the service provider is not available. The owner must provide the written statements with the Petition for VDH Service Form.

Option 4:

The availability of private sector service provides shall be determined based on the backlog of work for private sector provides. Local health departments shall contact all private sector service providers servicing the locality on a (monthly, quarterly, or annual) basis to request their current backlog for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) and safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165).

Option 5:

The availability of private sector service provides shall be determined based on reporting from private sector providers. Local health departments shall contact all private sector service providers servicing the locality on a (monthly, quarterly, or annual) basis to ask whether the provided is available within the allotted timeframe for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) and safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165).

F. Public and Non-Profit Funded Projects

Projects that will be wholly or partially funded by public funds or funds from a non-profit organization shall be considered a hardship, provided the evaluation and design services required are outside of the exclusions of this policy (e.g. evaluations and designs for conventional onsite sewage systems equal to or less than 1,000 GPD) and provided the recipient of the funds meets the means testing criteria for VDH services.

G. Further Considerations.

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

operation of the proposed onsite sewage system or private well; and the effect on protection of public health and the environment.

F. Annual Review.

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

1. Recommendations for revisions provided by the Sewage Handling and Disposal Advisory Committee and other stakeholders.
2. Analysis of requests for VDH services pursuant to income eligibility criteria in Part 1, §4 of HB 888 to determine whether the income eligibility criteria in this policy should be revised.
3. Analysis of the estimated number of additional evaluations and designs that could be provided by the private sector within localities versus the actual increases observed over the previous state fiscal year (July 1st to June 30th) to determine whether modification to the equation in Section IV is necessary.
4. Analysis of request for consideration of hardships not specified within these Hardship Guidelines and determinations rendered for each case by District Health Directors to determine whether additional specific hardships or exclusion are necessary.
5. Analysis of the percent of private sector safe, adequate, and proper evaluations.
6. Analysis of the percent of private sector evaluations and designs for alternative onsite sewage system and conventional onsite sewage systems to determine whether additional verification of property owner disclosure is required.⁴
7. To assist property owners in making informed decisions regarding onsite sewage system and private well evaluation and design services, VDH will conduct surveys regarding the cost of private sector services. Information regarding the average cost of private sector services will be posted on the agency website with breakdowns at the state, regional, and locality level.
8. Update the policy based on changes to the Federal Poverty Guidelines.

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

⁴ Private sector service providers are required to disclose to the property owner when a conventional onsite sewage system is an option.

Appendix A
Petition for VDH Services Form

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

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

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

- Qualify for fee waiver pursuant to 12VAC5-620-80.A.
- Replacement well.
- Well abandonment.
- Safe, Adequate, and Proper Evaluation.
- Onsite sewage system repair – income below 200% of the federal poverty guidelines.
- Pit privy – income below 200% of the federal poverty guidelines.
- Insufficient number of private sector service providers.⁵
- Fewer than 2 private sector services providers.⁶
- Private sector not available within 15 Days – new onsite sewage system, new private well, or safe, adequate, and proper evaluation. Provide the names of private sector services providers contacted and timeframe:

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

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

Owners Signature

Date

Petition for services Approved Denied by _____

⁵ (Insert link to VDH website – list of localities with insufficient number of private sector service providers.)

⁶ (Insert link to VDH website – list of localities with fewer than 2 private sector service providers.)

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

Means Testing Criteria - July 1, 2019 to June 30, 2020

Persons in Family/Household	400% of Federal Poverty Guidelines
1	\$49,960
2	\$67,640
3	\$85,320
4	\$103,000
5	\$120,680
6	\$138,360
7	\$156,040
8	\$173,720

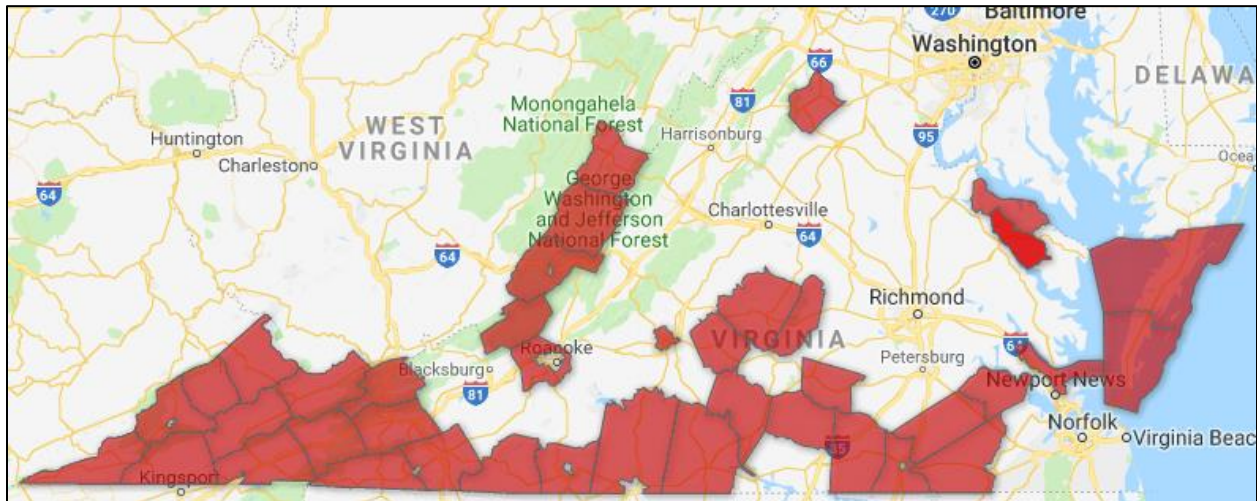
Source: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation;
<https://aspe.hhs.gov/poverty-guidelines>

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Appendix C
 Hardship Guidelines Summary

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

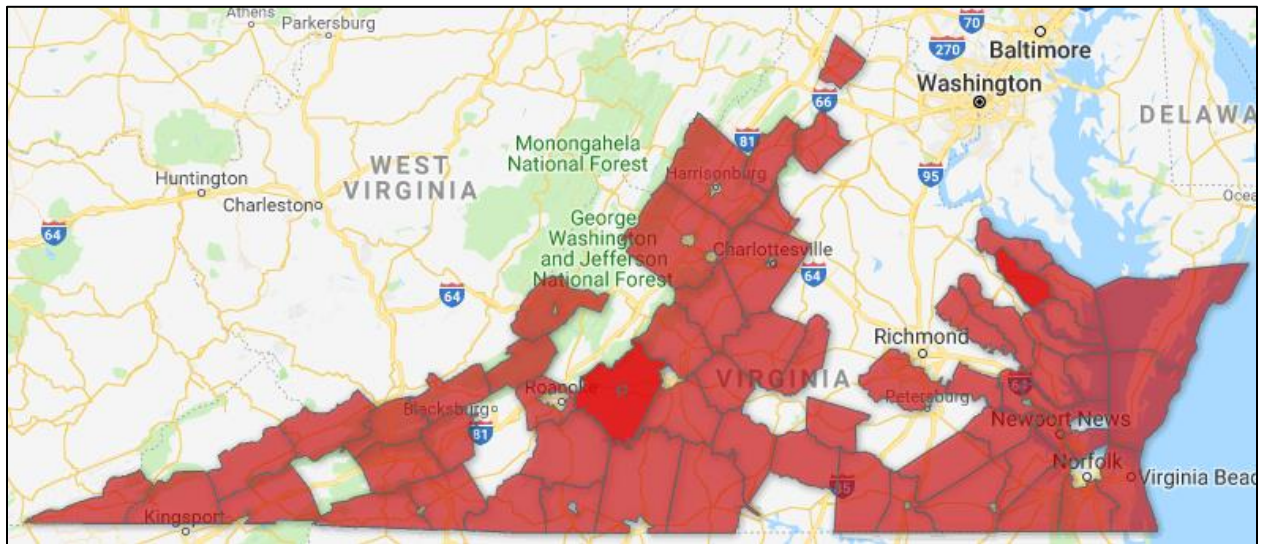
Appendix D
Localities with an Insufficient Number of Service Providers – Onsite Sewage System
Construction



List of Localities Meeting Hardship

- | | | | |
|--------------|--------------|--------------|-------------|
| Accomack | Alleghany | Appomattox | Bath |
| Bland | Brunswick | Buchanan | Buckingham |
| Carroll | Charlotte | Craig | Cumberland |
| Dickenson | Grayson | Greensville | Halifax |
| Henry | Highland | Lee | Lunenburg |
| Lynchburg | Northampton | Nottoway | Patrick |
| Pittsylvania | Rappahannock | Richmond Co. | Roanoke Co. |
| Russell | Scott | Smyth | Southampton |
| Surry | Sussex | Tazewell | Washington |
| Westmoreland | Wise | Wythe | York |

Localities with an Insufficient Number of Service Providers – Private Well Construction



List of Localities Meeting Hardship

- | | | | |
|----------------|----------------|--------------|--------------|
| Accomack | Albemarle | Alleghany | Amherst |
| Appomattox | Augusta | Bedford | Bland |
| Brunswick | Buckingham | Campbell | Carroll |
| Charles City | Charlotte | Chesapeake | Chesterfield |
| Clarke | Craig | Cumberland | Franklin Co. |
| Giles | Gloucester | Grayson | Greene |
| Greensville | Halifax | Hampton | Henry |
| Isle of Wight | James City | King & Queen | King William |
| Lancaster | Lee | Lunenburg | Mathews |
| Middlesex | Nelson | Newport News | Northampton |
| Northumberland | Nottoway | Page | Patrick |
| Pittsylvania | Pulaski | Rappahannock | Richmond Co. |
| Roanoke Co. | Rockingham | Russell | Scott |
| Southampton | Suffolk | Surry | Sussex |
| Tazewell | Virginia Beach | Washington | Westmoreland |
| Wythe | York | | |

Localities with an Insufficient Number of Service Providers – Safe, Adequate, and Proper Evaluations

All localities. Safe, adequate, and proper evaluations are listed as an eligible hardship.

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