



# COMMONWEALTH of VIRGINIA

Department of Health

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June 15, 2018

**TO:** District Health Directors **GMP#2018-01**  
District Environmental Health Managers

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

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

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

**SUBJECT:** GUIDANCE MEMORANDUM AND POLICY #2018-01:

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

Appendices:

A	Chart of the appropriate violation fees.
B1	Civil Summons Ticket Notice for issue unrelated to O&M.
B2	Civil Summons Ticket Notice and NOAV for missing O&M report.
C1	Civil Summons Ticket.
C2	Information FAQ to include with civil summons ticket.
D1	Business process for failing onsite sewage system or issue not related to O&M.
D2	Business process for missing O&M report—civil penalty only.
D3	APA Process for Alleged Violations
E	Motion and Notice for Hearing.
F	VENIS data entry.
G	Letter to close the ticket and NOAV.
H	Example letter for agreement.
I	Letter of notice of O&M requirements.

## Introduction

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

On December 7, 2011, the Board enacted the final AOSS Regulations. Since the enactment of the AOSS Regulations, staff has implemented both formal compliance as well as voluntary compliance measures with owners. This policy provides the various tools available to reach compliance for violations of the AOSS Regulations, including civil penalties.

One area of specific concern for compliance with the AOSS Regulations is the sampling and operation and maintenance (O&M) requirements for small AOSSs.<sup>3</sup> To-date, staff has sought voluntary informal compliance for the annual AOSS operator visit.<sup>4</sup> With voluntary informal compliance, VDH has achieved approximately 40% statewide compliance with the submission of O&M and sampling requirements. This policy outlines the tools needed for VDH’s continued enforcement strategy to reach 100% compliance. The Office of Environmental Health Services (OEHS) will continue to work with district staff on monitoring compliance rates with respect to the following:

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

The goal is to ensure 100% compliance within a reasonable timeframe through active monitoring, oversight, and the use of civil penalty tickets.

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<sup>1</sup> See Virginia Code § 32.1-164.

<sup>2</sup> See Virginia Code § 32.1-16.

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

<sup>4</sup> In person conversations should always be followed by a letter that outlines the nature of the conversation to avoid misunderstanding and confusion.

This policy emphasizes and expects a renewed effort of voluntary compliance through informal communication means (i.e., phone calls, notice letters, and in-person conversations that educate owners) and formal compliance (i.e., issuance of a notice of alleged violation, letter of agreement, case decision, civil penalties, etc.). The District Health Director and Environmental Health (EH) Manager will work in concert with OEHS utilizing both informal communication and formal compliance outlined herein, including the use of civil penalties, to bring about improved regulatory compliance for all suspected violations. The goal is to focus on correction of public health threats to protect health and groundwater.

This policy outlines the compliance procedures that Virginia Department of Health (VDH) staff must use to notify owners of alleged violations of the AOSS Regulations and the full range of compliance procedures available. While staff begins with the least adversarial method appropriate to the circumstances, the selection of a procedure lies wholly within VDH's discretion, law, and regulation. VDH encourages property owners to have an open discussion during the compliance process to ensure that compliance actions support the goals and mission of VDH to protect public health and groundwater. Again, this policy details the full range of compliance and enforcement procedures available and does not dictate which procedure must be used, as each case is unique.

### **Notifying Owners & APA Process**

The first step in compliance is always to educate the owner on their duties and responsibilities under the AOSS Regulations. Staff can utilize informal compliance measures of letters, phone calls, and emails to apprise owners of their duties. Staff may also discuss suspected violations, but should advise owner that if there is a suspected regulatory violation, an NOAV will be sent that will provide further detail on the alleged violation, recommended actions, and also allow for an informal meeting (IFFC) and a timeframe for correction.

#### ***Notice of Alleged Violation (NOAV)***

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

occurred.<sup>5</sup> Anytime the LHD reasonably believes a violation of the regulations has occurred and enforcement is necessary, an NOAV should be drafted.

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

### *Elements of a Notice of Alleged Violation*

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

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

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

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<sup>5</sup> An NOAV should not state that an owner "has violated" or "is in violation of" an environmental requirement, because that might imply incorrectly that VDH has made a case decision. The owner is entitled to notice and a process to dispute alleged violations before a case decision is made or any corrective action imposed. Corrective actions can be suggested in an NOAV as described in 12VAC5-610-170. Under the Administrative Process Act (APA), Va. Code § 2.2-4001:

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

A model NOAV will contain the following:

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

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<sup>6</sup> The legal requirements, including citations, are labeled separately from the observations to make clear that both observations and legal requirements are included, that they are separately identified for each alleged violation, and that a specific provision has been cited for each legal requirement.

## 11. Appropriate VDH contact information.

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

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

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

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

After issuing an NOAV, staff must track and follow-up on any action to verify the owner has returned to compliance with applicable regulations. Staff must document all activity associated with the enforcement matter in VENIS. Staff should check every deadline as required by law or Letter of Agreement within 30 days of the deadline or as soon as practicable. VDH staff may pursue enforcement for alleged violations found during

subsequent inspections or record reviews. To confirm the owner has returned to compliance, staff may obtain written or electronic confirmation from the owner, conduct a follow-up inspection, or both. Staff will document all correspondence and follow-up inspections in the file and VENIS.

#### *Subsequent Actions*

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

If an owner cannot meet a date in their plan as written in the Letter of Agreement to return to compliance, the owner should notify VDH immediately and provide documentation why they are unable to do so. VDH staff may extend the date for an owner action for good cause if the owner has notified VDH as soon as those circumstances became apparent. Extensions must be documented to the file and may require a new Letter of Agreement or consent order. The extension should clearly state that it does not relieve the owner from his or her obligation to comply with applicable environmental regulations. If an owner misses a deadline without good cause or fails to notify VDH, staff should promptly schedule an IFFC and consider heightened enforcement action, including civil penalties, as detailed below.

#### *Informal Fact Finding Conferences*

Under Virginia Code §2.2-4019, VDH is required to determine the fact basis for agency decisions through IFFC. The IFFC also gives the parties (VDH and permit holder/owner) certain rights, including:

1. To reasonable notice of the time and place of the conference, and the issues involved;
2. To appear either in person or to be accompanied by counsel;
3. To have notice of any contrary fact basis or information in the possession of the agency upon which the agency may rely in any way when making an adverse decision;
4. To a prompt decision; and
5. To be informed in writing, within 90 days after the IFFC was convened, of the factual or procedural basis for an adverse decision in any case.

This conference is intended as the primary provision for case decisions, unless a formal hearing is requested. This is because the IFFC serves as an excellent vehicle for a conversation about the issues, education of the owner, mutually agreed upon solutions actions and/or simplification of the issues involved. The IFFC brings the parties to the table informally, and enables the parties to freely discuss arriving at a return to regulatory

compliance. IFFC's are usually conducted at the local level with the local health director presiding over the conference. These conferences are intended to be informal. The presentation of evidence is entirely voluntary; VDH has no power to subpoena witnesses and no verbatim record need be taken. In sum, an IFFC is an extremely powerful and effective tool which enables the local health department and the regulant to explore a non-adversarial, mutually agreeable resolution to a conflict; and enables the local health department to develop all of the facts and hear all sides of a story before arriving at a case decision.

### ***Case Decisions***

Generally, case decisions should issue following an IFFC even when a mutually agreed solution is reached. A case decision constitutes the department's recorded finding of violation and is the best place and appropriate stage to 'make the case.' Virginia Code §2.2-4020(E) requires that case decisions and recommendations "shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof." In situations where a VDH employee is charged with making a decision, a case decision must generally be rendered within 90 days of the informal fact-finding proceeding or formal hearing. (Virginia Code §2.2-4021(B)) Case decisions may be sent to affected parties by regular mail; the signed original case decision shall be kept with the agency and is a public record. (Virginia Code §2.2-4023) The AOSS regulations contain more restrictive requirements for the issuance of case decisions arising from informal fact-finding proceedings. Case decisions rendered pursuant to an informal fact-finding proceeding must be sent to the appellant within 15 working days of the hearing, unless the parties mutually agree upon a later date. Ideally, during the IFFC the parties will mutually agree to a date for a case decision or alternative solution which obviates the need for issuance. 12VAC5-610-200.A; 12VAC5-613- 180.A.

### ***Formal Hearing***

The AOSS regulations contain a significant limitation on the right to formal hearings. These regulations provide that no person other than an owner shall have the right to contest the issuance of a construction permit, operation permit, or inspection statement unless that person first participates in an informal hearing and sufficiently demonstrates: (1) the Health Department did not properly apply the pertinent regulatory standards; and (2) the person has been injured in some way by the issuance of the permit or statement. 12VAC5-610-220; 12VAC5-630-200. In a formal hearing, "the agency shall afford opportunity for the formal taking of evidence upon relevant fact issues." Va. Code §2.2-4020. A formal record is maintained of the evidence and arguments produced by both sides, and all facts pertinent to a resolution of the factual or legal issues are recorded and publicly displayed. When a formal hearing is held, VDH is subject to extensive notice requirements. The involved party is entitled to notice of the time, place and nature of the



proceeding, to notice of the basic law or laws under which VDH is exercising authority, and to notice of the matters of fact or law asserted or questioned by the agency. *Id.* Formal hearings for many onsite cases are adjudicated by the Sewage Handling and Disposal Appeal Review Board. (Va. Code § 32.1-166.1) These are not the only rights to which the party is entitled. The involved party also may be accompanied and represented by counsel, submit oral, documentary evidence, and rebuttal proofs, he may cross examine witnesses produced by VDH, and is entitled to have the proceedings concluded "with dispatch." (Va. Code §2.2-4020) For hearings conducted under the SHDR, and the AOSS regulations, the Commissioner or a designated hearing officer has the subpoena power to compel the attendance of witnesses and to compel the production of documents. If a witness fails to appear or testify or a party fails to produce the subpoenaed materials without an adequate justification, the Commissioner may refer such failure to the appropriate circuit court for enforcement through an order of contempt. (Va. Code §2.2-4022) 8. Case Decisions. Virginia Code § 2.2-4019 and -4020 govern informal fact-finding conferences and formal hearings. These sections of the Code also discuss case decisions resulting from these proceedings, which generally provide the factual basis for the decision.

## **Heightened Enforcement**

Heightened enforcement should be utilized when initial compliance attempts with the owner have failed. If the owner fails to complete the actions required in an NOAV, letter of agreement, or case decision in order to return to compliance with the regulations, the below mentioned heightened enforcement options are available. The choice of which heightened enforcement option to use to reach compliance will be dependent upon the unique facts of the case and staff are encouraged to consult with OEHS for assistance. For example, a chronically missing O&M report may be a better candidate for issuance of a civil summons ticket than a criminal prosecution. However, sewage surfacing to the ground is an imminent public health hazard and, if the violation remains uncorrected, it demands a more robust and immediate action such as criminal prosecution.

### ***Permit Revocation and Null and Void***

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

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

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

The third circumstance of revocation may be applied as an enforcement mechanism when there is some environmentally hazardous site condition that existed prior to the issuance of the permit, but was not revealed to or discovered by the local health department (LHD) until after the permit was issued. However, in circumstances where the environmentally hazardous site condition did not exist until *after* the permit was issued, the proper enforcement mechanism would be to declare the permit null and void. Under the AOSS Regulations, a construction permit can be declared null and void when (i) conditions such as house location, sewage system location, well location, topography, drainage ways, or other site conditions are changed from those shown on the application or (ii) conditions have changed from those shown on the construction permit.<sup>9</sup>

### ***Consent Order***

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

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

The primary goal of a consent order is to achieve compliance with the applicable regulations by mutual consent. The onus is on VDH to persuade the owner to agree to all

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<sup>8</sup> See 12VAC5-610-300.C.

<sup>9</sup> See 12VAC5-610-300(A)(1).

provisions contained in the order, even when some provisions may impose burdens, waive rights, and call for monetary payments on the part of the owner. Achieving consent requires the skills of negotiation and tactfulness; it requires the ability to communicate with the owner in a non-threatening manner.

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

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

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

In terms of timing, the consent order is an enforcement mechanism that should be pursued only after informal compliance methods have been exhausted, after an NOAV has been issued, a Letter of Agreement has not been followed, and following (or during) an IFFC. If the owner still has not abated or fixed the problem after the LHD has pursued

these preliminary informal communications and enforcement mechanisms, then VDH should seek compliance through a consent order before generally pursuing criminal enforcement except for extraordinary circumstances where public health is threatened.

### ***Criminal Prosecution***

Va. Code §32.1-27 makes the violation of any regulation of the Board of Health, a Class 1 misdemeanor<sup>10</sup> punishable by a fine, imprisonment, or both.<sup>11</sup> Health districts seeking to proceed criminally against an owner, must inform OEHS and the Deputy Commissioner prior to seeking a summons from a jurisdictional magistrate and pursuing misdemeanor criminal charges in general district court by submitting an event notification in accordance with VDH's correspondence manual. The Deputy Commissioner must be informed briefly in writing of the case and the informal communications and formal compliance measures that have been taken to justify a decision to pursue criminal enforcement. The Deputy Commissioner will communicate directly with health directors and environmental health managers should additional detail be required or the deputy commissioner disagree with the decision.

### ***Civil Summons Ticket***

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

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

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

<sup>11</sup> Board of Health regulations may prescribe a different penalty for a specific violation in which case the prescribed penalty will be applied.

<sup>12</sup> See 12VAC5-650-20 for full purpose and authority of the Regulations.

A Civil Summons Ticket may be issued for any violation listed in 12VAC5-650-50 and 12VAC5-650-60 of the Regulations.<sup>13</sup> The authority to implement the Schedule of Civil Penalties is delegated to the District Health Director from the Commissioner of Health, and the District Health Director may delegate to the EH Manager.<sup>14</sup> While the civil summons ticket may be used for any violation of the AOSS Regulations, as well as the SHDR and the Alternative Discharging Regulations, it will be the primary enforcement mechanism for missing O&M reports under 12 VAC5-613-190 of the AOSS Regulations.

*Considerations for Issuing a Civil Summons Ticket*

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

1. The gravity of the alleged violation and its impact on public health and the environment;
2. Whether the LHD has attempted to achieve compliance by informal compliance such as educating the alleged offender on the requirements of the law and the public health hazards associated with the alleged violations;
3. Whether the alleged offender has been cooperative and has taken steps to remedy the alleged violation, i.e. have they submitted a Letter of Agreement and followed the plan;
4. Economic considerations and any financial hardship demonstrated by the alleged violator;
5. The likelihood that the imposition of civil penalties will provide sufficient incentive for the alleged offender to remedy the public health threat;
6. Whether the LHD has ensured that its database for operation and maintenance (O&M) reports is up to date<sup>15</sup>;
7. Whether imposing civil penalties in lieu of criminal prosecution or other administrative remedies is appropriate given the circumstances.

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<sup>13</sup> The schedule of civil penalties applies to the Sewage Handling Regulations, 12VAC 5-610; the Alternative Onsite Sewage Regulations, 12VAC5-613-10; and the Alternative Discharging Onsite Sewage Regulations, 12VAC5-640-10.

<sup>14</sup> See 12VAC5-650-40(C).

<sup>15</sup> Before a LHD can consider sending a NOAV and Notice of Civil Summons Ticket for a missing O&M report, the LHD must demonstrate to OEHS that it has less than 3% of reports not attached to facilities to avoid excessive backlog in verifying that reports are missing. All districts should have at least 97% of reports attached to properties or facilities before July 1, 2017.

*Civil Penalty Ticket Administrative Process:*

Adjudication of civil penalties will take place in the General District Court of the jurisdiction where the alleged violation occurred.<sup>16</sup> In bringing the civil suit to court, the Department must demonstrate by a preponderance of the evidence that the alleged violation occurred, which means that the Department must show it was more likely than not that the person who received a ticket actually committed the alleged violation. If the judge finds that the Department has satisfied its burden of proof, then the judge will order the offender to pay the appropriate civil penalty. To issue a civil summons ticket, staff must take the following steps (see also Appendix D1 and D2 for Vizio Drawings):

1. After verifying an alleged violation exists, the LHD should send an NOAV. If the alleged violation is a missing O&M report, staff must check property records to ensure that the owner has received at least one letter (Appendix I), preferably two (Appendix J), notifying them of their statutory duty to submit an O&M report before sending the NOAV. Staff should document all communications, meetings, phone conversations with the owner regarding the submittal of an O&M report.
2. Staff may concurrently schedule an IFFC in the NOAV, unless the alleged violation is a missing operation and maintenance (O&M) report pursuant to 12 VAC5-613-190. If staff has been unsuccessful in achieving compliance through routine reminder letters in obtaining the O&M report, staff need not schedule an IFFC, staff may contact OEHS for Civil Summons Ticket Eligibility as described below in Step 4.
3. Staff conducts the IFFC and works with the owner to develop a plan of action to return the system to compliance, and draft a Letter of Agreement (Appendix H). If the owner does not show up at the IFFC or demonstrates no interest in developing a plan of action, staff may render a case decision and contact OEHS to initiate a Civil Summons Ticket.
4. Staff presents case to OEHS for Civil Summons Ticket eligibility. Staff must document attempts at gaining compliance through communications, meetings, Letters of Agreement, and/or routine O&M letters (Appendix I and Appendix J). If OEHS agrees that a Civil Summons Ticket is the correct enforcement tool, LHD and OEHS will provide a written recommendation to the Deputy Commissioner for Community Health. Once the Deputy Commissioner agrees that a Civil Summons Ticket is warranted, a Notice of Civil Summons Ticket (Appendix B1 or B2 depending on whether the violation is related to an O&M report) is issued to the owner or operator from the LHD.

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<sup>16</sup> The General District Court hears civil cases with claims \$4,500 or less and shares authority with the circuit court for claims between \$4,500 and \$25,000.

- a. The Notice of Civil Summons Ticket details the alleged violation, what corrective actions are sought, and provides notice that inaction (i.e., violation remains uncorrected for at least **30 days**) will result in a Civil Summons Ticket (Appendix C1 and C2) being issued for the violation with the appropriate violation fee.
  - b. A Civil Summons Ticket does not have to be issued in 30 days after issuance of a Notice of Civil Summons Ticket, but there must be 30 days between issuance of the Notice of Civil Summons Ticket and the Civil Summons Ticket.
5. If after issuing the Civil Summons Ticket Notice, the suspected violator does not demonstrate that the observed violation has been corrected within 30 days and has not contacted the LHD, the District Director or EH Manager will contact OEHS for issuance of a Civil Summons Ticket. A Civil Summons Ticket is not required to issue; a decision to issue a Civil Summons Ticket will encompass the factors listed in the Considerations for Civil Summons Ticket above. The Civil Summons Ticket (Appendix C1 & C2) will be delivered to the suspected violator by either hand delivering, posting at property owner's residence, or by certified mail.
6. The person issued the Civil Summons Ticket may contact the LHD to pay the fee and demonstrate that they have corrected the violation by providing written proof or requesting a LHD site visit. If the owner contacts the Department and states that they intend to correct the violation but cannot accomplish the correction within the 30 day time frame, the EH Manager, in consultation with OEHS, may give the owner further time to correct the violation.
7. If the person pays the Civil Summons Ticket within 30 days, the EH Manager will note the payment in VENIS, confirm the violation has been corrected (through documentation or site visit), issue a Closure Letter (Appendix G) and not seek a Motion and Notice of Hearing (Appendix E). If the violation has not been corrected, the EH Manager may proceed with scheduling for court. The EH Manager or District Director may wish to waive the Civil Summons Ticket as new facts have been discovered, in such case, contact OEHS for discussion and next steps. If the Civil Summons Ticket is waived, use the Closure Letter (Appendix G).
8. If the Civil Summons Ticket is not paid within 30 days or the violator has chosen to contest the violation in court, the EH Manager will contact appropriate staff at OEHS before filing a Motion and Notice of Hearing in the General District Court to ensure proper scheduling for the Assistant Attorney General.<sup>17</sup>

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<sup>17</sup> The Motion and Notice for Hearing is found at <http://www.courts.state.va.us/forms/district/dc371.pdf>.

9. OEHS will contact the EH Manager and provide the availability for the Assistant Attorney General. After getting possible dates for legal representation from the Assistant Attorney General, the EH Manager will obtain an acceptable court date from the appropriate General District Court and file a Motion and Notice of Hearing (Appendix E), attaching the Civil Summons Ticket (Appendix C1&C2) to the Motion. The EH Manager will share this date with OEHS, record it into VENIS, and schedule the court appearance with the Assistant Attorney General.
10. The EH Manager will ask the Sheriff (for the jurisdiction from which the violation arises) to serve the Motion and Notice of Hearing along with the Civil Summons Ticket on the suspected violator. The Sheriff will deliver the motion and the court date is set. The EH manager will notify OEHS and the Assistant Attorney General upon service of the Civil Summons Ticket.
11. On the court date, the EH Manager, other VDH personnel who assisted in the investigation of the case, and the Assistant Attorney General who represents the Department, will appear in court to bring the civil suit forward. The EH Manager and staff must be prepared to present their evidence of why a civil penalty is warranted for the violation. In presenting the case, staff must bring a copy of relevant inspection notes, and all documents and photographs relevant to the Department's investigation of the violation, including a copy of the pertinent regulations to court. Staff should be prepared to testify to all informal communications and formal compliance attempts made by the VDH.
12. Once staff has issued a Civil Summons Ticket, subsequent Civil Summons Tickets based upon the same set of facts can be issued every 10 days at the higher fee found in 12VAC5-650-60 until the violation is corrected up to the statutory limit of \$3,000. Before any subsequent tickets are issued, staff should contact OEHS for consultation and documentation.
13. If after the Motion and Notice for Hearing and Civil Summons Ticket has been served, the owner wishes to pay the ticket and return to compliance, or the EH Manager wishes to no longer pursue the Civil Summons Ticket, the EH Manager must contact the OEHS and the AG's Office to remove the Civil Summons Ticket from the Court's docket. A Civil Summons Ticket may be removed from a court's docket at any time that the Department no longer wishes to pursue enforcement. If the Department decides not to pursue enforcement, a Closure Letter, (Appendix G), will be sent to the owner or operator.



Appendix A

Chart of Violations and Penalty

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

<INSERT DATE>

**NOTICE OF CIVIL SUMMONS TICKET**

<INSERT OWNER NAME>

**CERTIFIED MAIL**

<INSERT ADDRESS>

Dear<INSERT OWNER NAME>

RE: NOTICE OF CIVIL SUMMONS TICKET:

<INSERT PROPERTY IDENTIFYING INFORMATION>

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

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

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

You can schedule the IFFC by contacting <EH SPECIALIST> at <PHONE NUMBER>, <ADDRESS> within 30 days of your receipt of this letter. Please be advised this is not a case decision as described in Virginia Code § 2.2-4000, et. seq.

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

Sincerely,

<EH MANAGER>

<DATE>

NOTICE OF ALLEGED VIOLATION  
AND  
NOTICE OF CIVIL SUMMONS TICKET

<Name>  
<Address>

**CERTIFIED MAIL**

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

Dear <Owner Name>:

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

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

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

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

<Property Owner Name>

<DATE>

Page Two

If you are having trouble finding a licensed operator to submit the report, please contact me as soon as possible to discuss. If you have additional facts that you believe bear on this Notice and wish to schedule an Informal Fact-Finding Conference (IFFC) pursuant to Virginia Code § 2.2-4019, please contact me at <PHONE NUMBER>, <EMAIL>, <ADDRESS>. Please be advised this is not a case decision as described in Virginia Code § 2.2-4000, et. seq.

If your AOSS has been inspected, or if you believe you received this Notice in error, let me know as soon as possible. Thank you for your cooperation and timely response.

Sincerely,

<EHS>

<Title>

Appendix C1

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

Property Address:

Date and Time Violation Observed:

Description of Violation:

Code Sections:

Virginia Code § 32.1-164(J)

12 Va. Admin. Code 5-650-\_\_\_\_\_

12 Va. Admin. Code 5-6 - \_\_\_\_\_

1<sup>st</sup> Penalty \_\_\_ 2<sup>nd</sup>/More Penalty \_\_\_\_\_

Penalty Assessed: \_\_\_\_\_

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

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

Certification of Issuing VDH Employee

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

\_\_\_ Hand delivered to: \_\_\_\_\_

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

\_\_\_\_\_  
Name of Person

\_\_\_\_\_  
Address of Service

\_\_\_\_\_  
City/State/Zip

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

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

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

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

between the hours of 8:00 a.m. to \_\_\_\_\_, Monday through Friday, phone \_\_\_\_\_.

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

**2. TO REQUEST A COURT HEARING:**

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

**YOU MUST COMPLETE AND SIGN THIS CERTIFICATION CHOOSE ONE:**

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

Name: \_\_\_\_\_  
Street \_\_\_\_\_  
Address: \_\_\_\_\_

City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

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

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

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**FOR FURTHER INFORMATION, Contact \_\_\_\_\_ Health Department, located at**

\_\_\_\_\_  
PHONE, (\_\_\_\_\_) \_\_\_\_\_  
- \_\_\_\_\_ Hours :\_ AM to :\_ PM.

# Virginia Department of Health

## Civil Summons Ticket

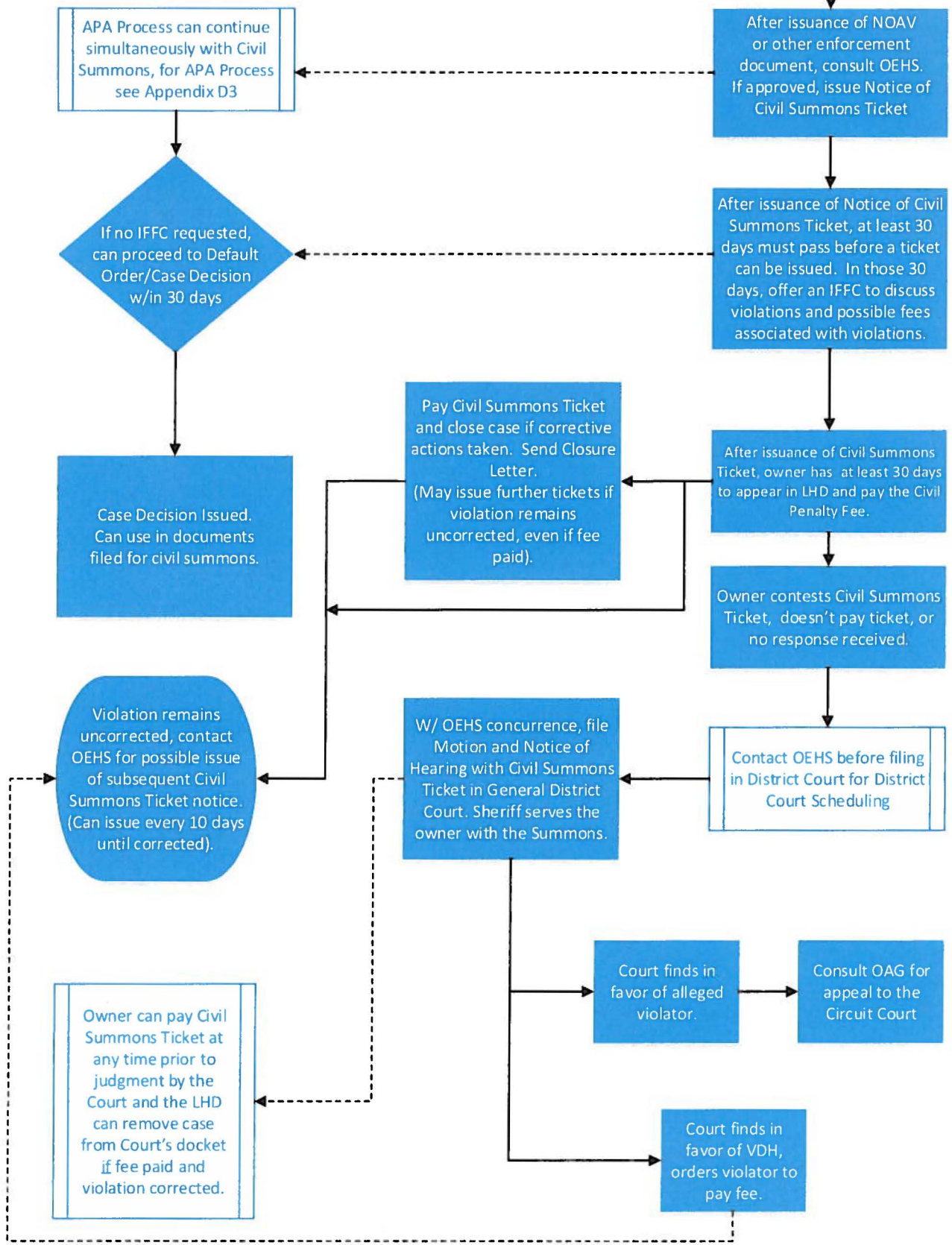
What do I do if I have received a Civil Penalty Ticket for a violation of the Virginia Department of Health's Regulations?

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

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

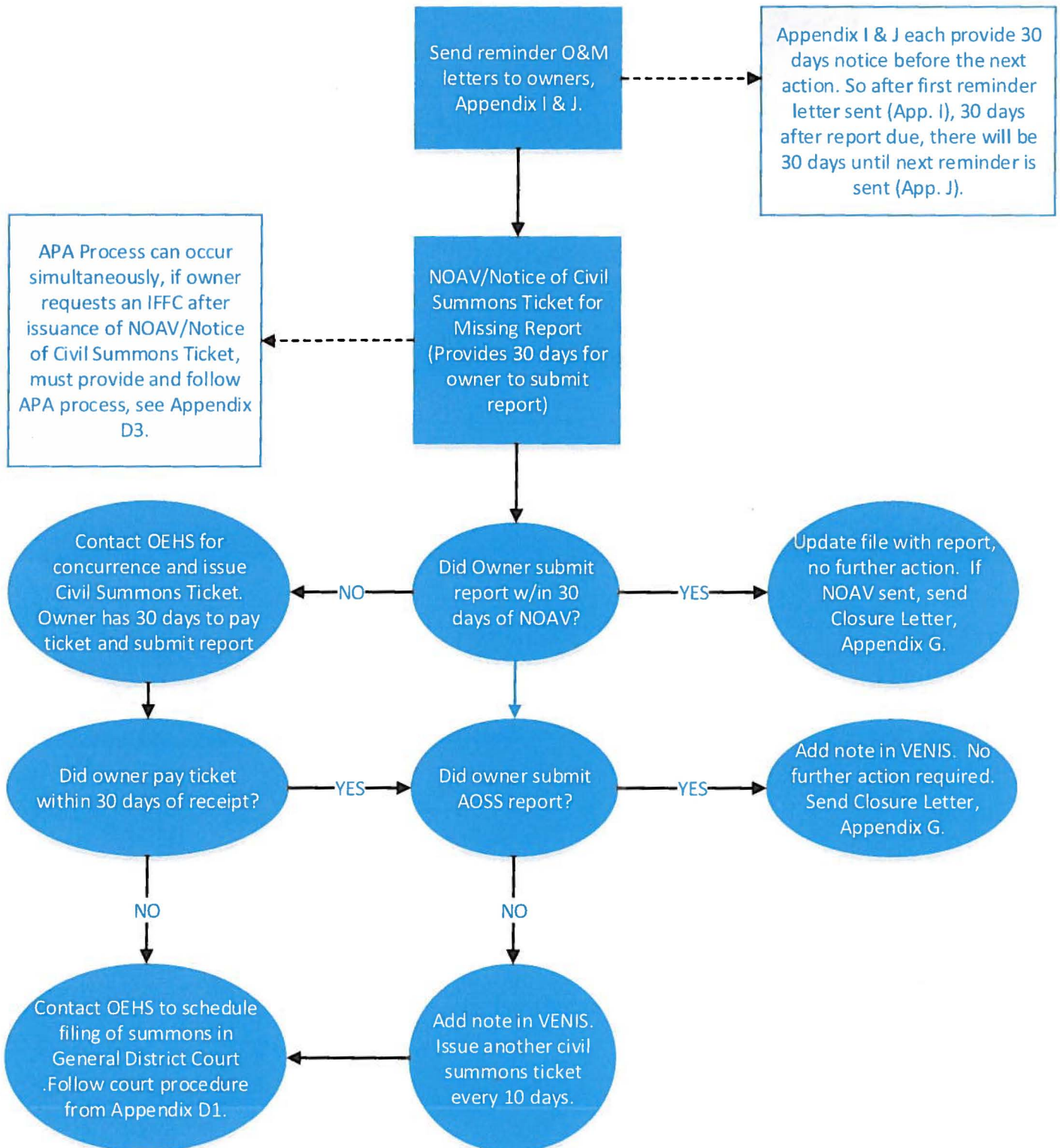
# Appendix D1

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



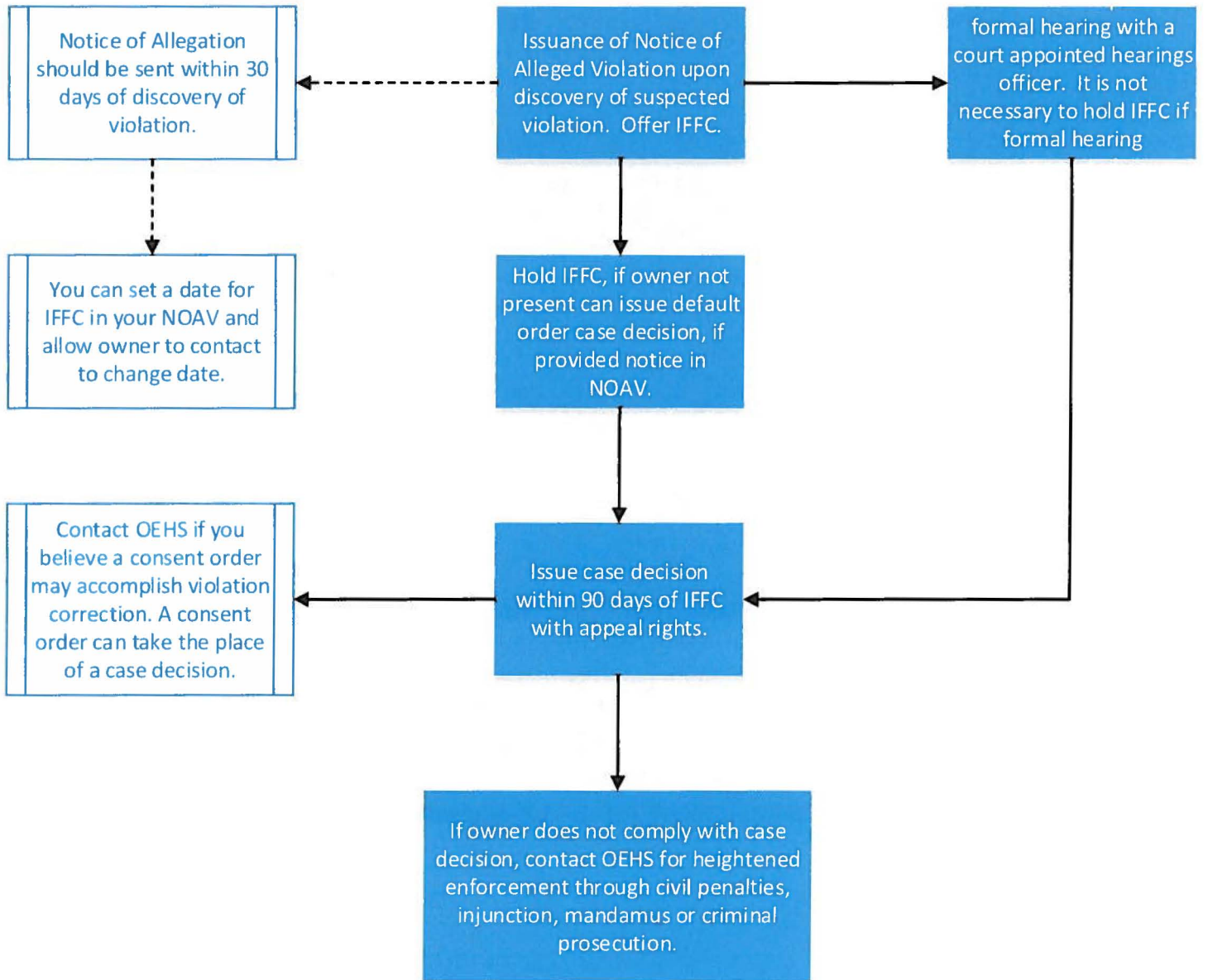
## Appendix D2

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





# APA Process for Alleged Violations



Appendix E

**MOTION AND NOTICE OF HEARING**

Commonwealth of Virginia

- General District Court
- Juvenile & Domestic Relations District Court

.....  
CITY OR COUNTY

.....  
STREET ADDRESS OF COURT

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

.....  
for the following reasons:

.....  
DATE

.....  
APPLICANT'S TITLE

.....  
APPLICANT'S SIGNATURE

**NOTICE OF HEARING**

TO: .....  
RESPONDENT

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

.....  
DATE

.....  
 CLERK

.....  
 DEPUTY CLERK

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

.....  
DATE

.....  
JUDGE

HEARING DATE CASE NO

**MOTION AND  
NOTICE OF HEARING**

Commonwealth of Virginia

.....

.....  
*v./In re*

DATE OF ORIGINAL JUDGMENT OR FINAL HEARING

Service on Respondent type required:

Personal Service Only

Personal or Substituted Service Only

Mailed on .....  
DATE

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

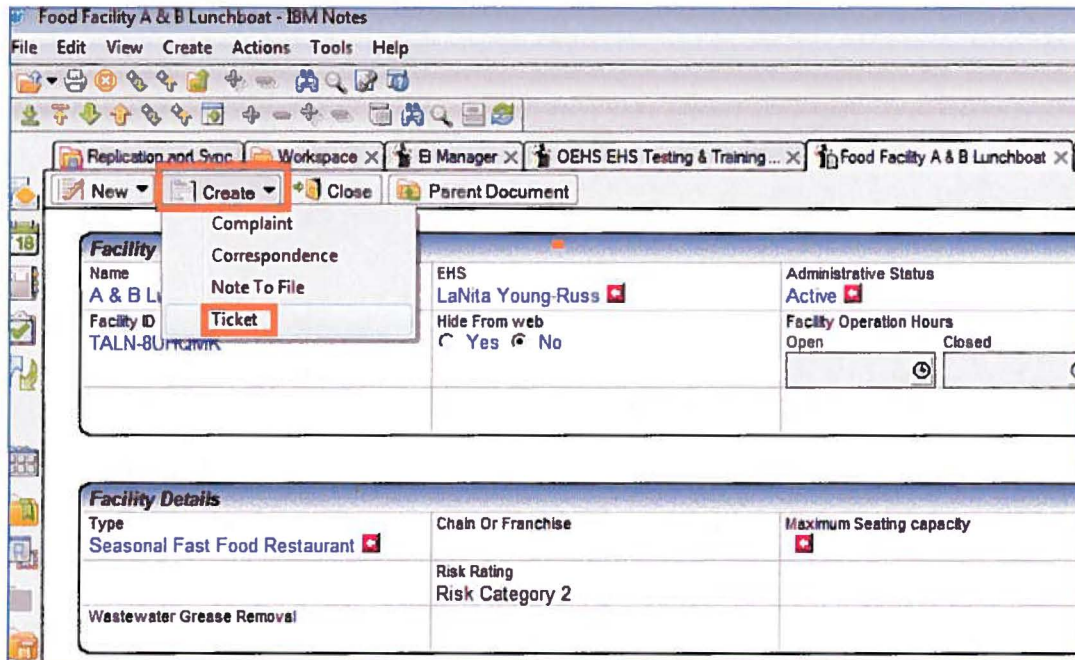
NAME .....	
ADDRESS .....	
.....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No. ....
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older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

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

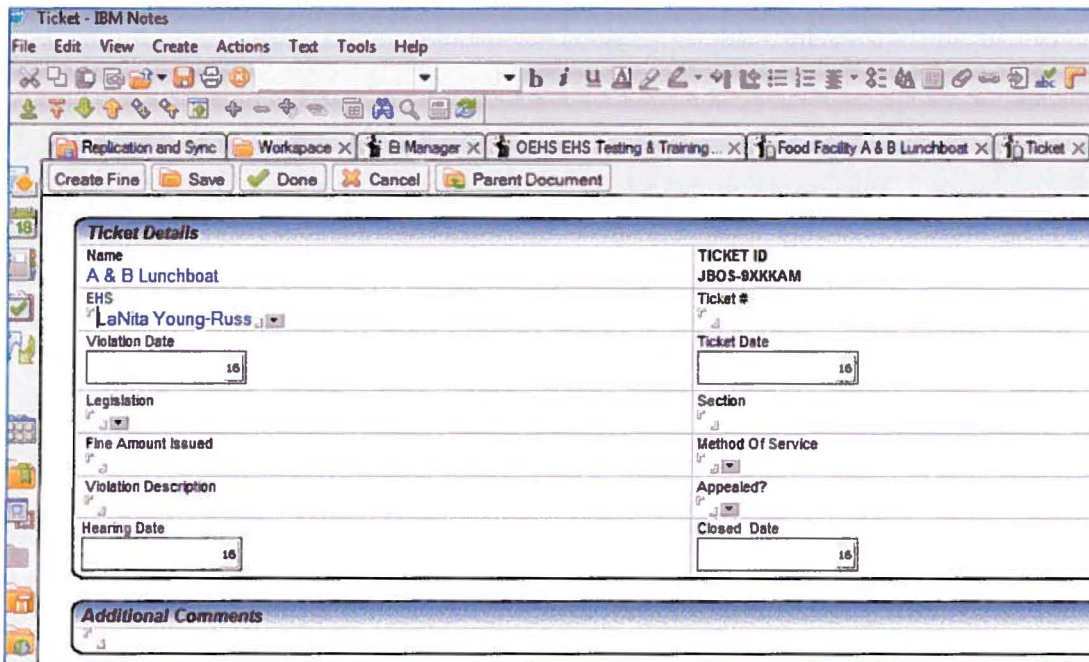
# Appendix F

## Creating a Civil Summons Ticket in VENIS

From the facility page, go to "create" "ticket"



Enter/edit details



Save the document.

**Ticket Details**

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

**Additional Comments**

**IBM Notes**

Do you want to save this new document?

Yes No Cancel

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

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

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

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

Additional Comments

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

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

Additional Comments

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

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

HEALTHSPACE  
HARMONIZED INTELLIGENCE  
OEHS Testing & Training

Navigation: Main, Billable Facilities, Businesses, Business Combined Renewal, Fees By End Date, Fees By End Month, Renewals and Invoices, Payments, Receipts, Permits, Totals Owning, **Miscellaneous**, Configuration, Certification

Search in View 'Billing/Tickets'

Name	Ticket ID	Violation Date	Fine Amount
<b>Unpaid</b>			
June 2015			
A & B Lunchboat	JBOS-9XKKAM	17-Jun-2015	\$150.00
ERROR: Incorrect data type for operator or @Function: Time/Date expected			
<b>Paid</b>			
June 2015			
11TestLocation	JBOS-9XDMVB	10-Jun-2015	\$100.00

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

Billing

Buttons: Create Annual Fee, Create Specific Fee, Create Random Fee, Create Renewal, Create Invoice, **Post Payment**, Regenerate Last Permit, Remove Fee, Adjusting Entry, Print Receipt, Remove Payment

Fee Details

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

Payment History

Invoice/Permit Details

Billing Type: Seasonal Fast Food Restaurant  
Billing Address: Owner Address

Enter the appropriate details and click "ok".

**Payment Information**

Payment amount will be applied to the oldest selected fees first

Outstanding Fees

- JBOS-9XKKAM 17-Jun-2015 Misc Ticket Fine \$150.00
- LCOE-9QCENR 31-Dec-2015 Annual Permit-02222-0205 \$40.00

Date: 19-Jun-2015 | Amount: \$150.00 | ID: JBOS-9XMT4

Payment Type: Cash

Check # / Details (30 character max):

OK Cancel

**Billing**

Create Annual Fee | Create Specific Fee | Create Random Fee | Create Renewal | Create Invoice | Post Payment | Regenerate Last Permit

Remove Fee | Adjusting Entry | Print Receipt | Remove Payment

**Fee Details**

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

Payment History

Invoice/Permit Details

A printable receipt is generated.

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

**Receipt**  
JBOS-9XMJVK

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

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

Legal Business

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

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

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

**Billing**

Create Annual Fee | Create Specific Fee | Create Random Fee | Create Renewal | Create Invoice | Post Payment | Regenerate Last Permit

Remove Fee | Adjusting Entry | Print Receipt | Remove Payment

**Fee Details**

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

**Payment History**

Payment ID	Payment Date	Posted By	Payment Type	Check # / Details	Payment Amount
JBOS-9XMT4	19-Jun-2015	James Bowles	Check	[none]	\$40.00
JBOS-9XMJVF	19-Jun-2015	James Bowles	Cash	[none]	\$150.00

**Invoice/Permit Details**

Permit # JBOS-9XMT4 for A & B Lunchboat Expires 31-Dec-2015



Appendix G

NOAV & Civil Summons Ticket Closure Letter

[DATE]

[NAME]  
[ADDRESS]

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

Dear (Property owner):

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

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

Sincerely,

[NAME]

---

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

---

<Today>

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

**Subject: Letter of Agreement**

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

**LETTER OF AGREEMENT**

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

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

**Background**

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

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

**Agreed Actions**

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

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

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

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

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

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

Sincerely,

**<EH Manager>**

cc: Case File

Seen and agreed by **<Owner Name>**:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

---

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

---

<Today>

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

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

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

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

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

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

## Appendix 1

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

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

Sincerely,

<EHO>, <EHOPosition>

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

Appendix I

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

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

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

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

---

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

---

<Today>

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

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

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

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

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

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

Appendix J

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

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

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

Sincerely,

<EHO>, <EHOPosition>

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



Appendix J

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

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

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

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