



COMMONWEALTH of VIRGINIA

Department of Health

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

September 1, 2017

MEMORANDUM

TO: District Health Directors
Environmental Health Managers
Office of Environmental Health Services Staff
Onsite Soil Evaluators
Professional Engineers
Onsite System Operators and Installers **GMP #2017-03**

THROUGH: Marissa J. Levine, MD, MPH, FAAFP
State Health Commissioner *for/ S.H. Mullins*

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

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

SUBJECT: GUIDANCE MEMORANDA AND POLICY (GMP) 2017-03
Safe, Adequate, and Proper Reviews

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

SCOPE:

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

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

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

AUTHORITY:

Va. Code § 32.1-165, as amended and effective as of July 1, 2016, provides authority for the procedures outlined in this policy (see attachment 4). Va. Code § 32.1-165 states, "No county, city, town, or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent." "Safe, adequate, and proper" means a treatment works that complies with the Board of Health's currently effective regulations. VDH may approve an older sewage system that does not comply with current regulations provided the sewage system (1) complies with the regulatory requirements in effect at the time of its installation, (2) is not failing, and (3) can be expected to function properly given its design and construction for the sewage flow and strength.

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

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

Va. Code § 32.1-164.1:1 allows owners with failing sewage systems, or those who want to voluntarily upgrade their sewage system the option to request a waiver from

additional treatment and/or pressure dosing. The Commissioner shall grant any request for such waiver, unless the Commissioner finds the failing system was installed illegally without a permit. Any such waivers shall be recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located.

BACKGROUND:

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

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

PROCEDURAL OUTLINE:

Staff is encouraged to work with respective local building departments to ensure excellent customer service and proper implementation of the Code and this policy. See attachment 1 for a business flow path for processing requests pursuant to Va. Code § 32.1-165; requests are expected to be processed within 15 business days of receipt as follows:

1. The local health department (LHD) receives a request from the local building official for a review pursuant to Va. Code § 32.1-165. See attachment 2a.
 - a. Upon receipt of the request, if unaccompanied by an application from the property owner, LHD must contact the property owner to obtain the owner’s permission for review. See attachment 2b.
2. LHD receives an application from the property owner for a review pursuant to Va. Code § 32.1-165. See attachment 2b.
 - a. The request from the building official and the application from the property owner (or agent) provides authority for review pursuant to Va. Code § 32.1-165 and grants permission for staff to enter the property and perform required evaluation.

- b. If the application is incomplete, staff must deny the application by notifying the owner in writing. The denial must explain the reasons why the application is incomplete and provide an opportunity to appeal. The owner can resubmit a new application at any time. See attachment 5.
 - c. If the request and application indicates a subject structure is not designed for human occupancy, staff should contact the local building official. In the event the building official confirms the proposed structure is not designed for human occupancy, staff can use attachment 3b for the response.
 3. After receiving the request from the building official and the property owner (or agent), staff should complete a review of paper and electronic records within two business days of receiving a complete application. Staff must also request copies of septic tank pumping records or operation and maintenance (O&M) records for the onsite sewage system, if available.
 - a. If the application is complete and does not contain supporting work from a licensed private sector professional, staff must schedule a site visit at a date and time acceptable to the property owner (or agent). As best practice, office support staff should schedule the site visit when the property owner (or agent) submits the completed application to the local health department.
 - b. If the application is complete and contains a certified private sector evaluation as authorized by the Code¹, VDH may perform a field inspection of the private sector work before issuing an approval, but an inspection is not required. Review of private sector work should be consistent with guidelines established in GMP #2017-01 or successor policy, meaning at least 10% of each licensee's work will be evaluated by completing a Level 2 (field) review. Staff is expected to process requests and complete applications within 5 business days of receipt when accompanied by a supporting private sector certified evaluation, unless the property owner (or agent) agrees to a different timeframe. Completion of attachment 3a constitutes a certified evaluation.

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

- c. For conventional onsite sewage system requests without supporting work from the private sector, at a minimum, the property owner must uncover the septic tank and

¹ In accordance with Va. Code § 32.1-165, staff may accept certified evaluations from (i) a professional engineer licensed pursuant to Chapter 4 of Title 54.1; (ii) an onsite soil evaluator, onsite sewage system operator, or onsite sewage system installer licensed pursuant to Chapter 23 of Title 54.1; (iii) or other individual with an appropriate certification from the National Sanitation Foundation, or equivalent for "safe, adequate and proper."

distribution box for inspection, unless the property owner requests and receives a waiver from this policy expectation using the application provided in Attachment 2b. If the owner believes uncovering the septic tank and distribution box would create a financial or other hardship, the property owner may request an exemption. If the owner has a licensed private sector professional assist with locating and uncovering the system they can submit a private sector evaluation as previously mentioned and a VDH site visit may not be needed.

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

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

Prior to the site visit, staff should make reasonable efforts to locate and obtain any previous records for the sewage system. Staff should provide any records found to help the owner locate system components. When a record of approval exists for the sewage system, that approval and permit remains effective until the system fails or there is a change in effluent flow or strength.

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

If the sewage system is more than five years old and the owner has no inspection or septic tank pumping records, staff should recommend the owner pump the septic tank, unless other facts dictate pumping is unnecessary.

4. If the owner uncovers the septic tank and distribution box for inspection, staff shall observe the septic tank and distribution box's condition and require repairs or recommend voluntary upgrades using best practices and professional judgment. Staff must notify the owner in writing if a repair is required (see attachment 6).
 - a. During the site visit, staff must create an accurate field sketch with "triangulated" measurements to locate system components (see attachments 3a and 3b) to the extent possible. Staff may, but is not required to, perform a site and soil evaluation to

determine the depth to soil-limiting features. All field measurements, soil evaluation observations, and site sketches shall be provided to the owner with the agency's case decision to approve or deny the request.

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

- b. If prior records document compliance with current regulations for dispersal of septic tank effluent and staff determines (1) the sewage system is not failing,² (2) was installed in accordance with the regulation in effect at the time of its installation, (3) there is no increase in effluent strength or flow, and (4) the sewage system can be expected function properly, then staff shall approve the request as "safe, adequate and proper" (complies with current regulations) using Attachment 3a (for requests associated with human occupancy) or Attachment 3b (for requests not associated with human occupancy).
- c. If sufficient information to determine whether the sewage system complies with current regulations is unavailable (i.e., unknown depth to limiting features, unknown depth of system installation, etc.), or where staff determines the sewage system does not comply with current regulations, then staff must approve the request as "non-conforming," provided (1) the sewage system is not failing, (2) was installed in accordance with the regulation in effect at the time of its installation, (3) there is no increase in effluent strength or flow, and (4) the sewage system can be expected function properly. Approval should be documented by using Attachment 3a (for requests associated with human occupancy) or Attachment 3b (for requests not associated with human occupancy).
 - i. With respect to horizontal separation distances to structures already installed at the time of the site visit (shed, gazebo, sidewalk, playground set, or other landscaping feature over the footprint of the dispersal field), staff must note whether those structures could potentially have a negative impact on the proper function or ability to perform O&M. However, these features would not normally result in a denial (see paragraph 4.d below), and staff could approve the sewage system as "nonconforming" to the current regulations.

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

- ii. If staff finds an existing (unpermitted, prior to 1990) well is insufficiently offset from the existing sewage system, staff should note the horizontal separation, and make appropriate recommendations with respect to testing or relocating the drinking water source. Unless a regulatory violation exists (see paragraph 4.d below), then staff may approve the use as nonconforming.
- iii. A property owner may voluntarily upgrade the sewage system if desired.
- d. If staff determines facts warrant denial of the request for “safe, adequate and proper,” staff must issue a Notice of Alleged Violation (NOAV) accurately describing and explaining why observations indicate the property owner may be violating applicable regulation and law, and provide the property owner with a right to appeal. The owner may file a new application to repair or replace the existing sewage system, or appeal the adverse decision, in accordance with the NOAV and denial for safe, adequate and proper pursuant to Va. Code § 32.1-165.

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

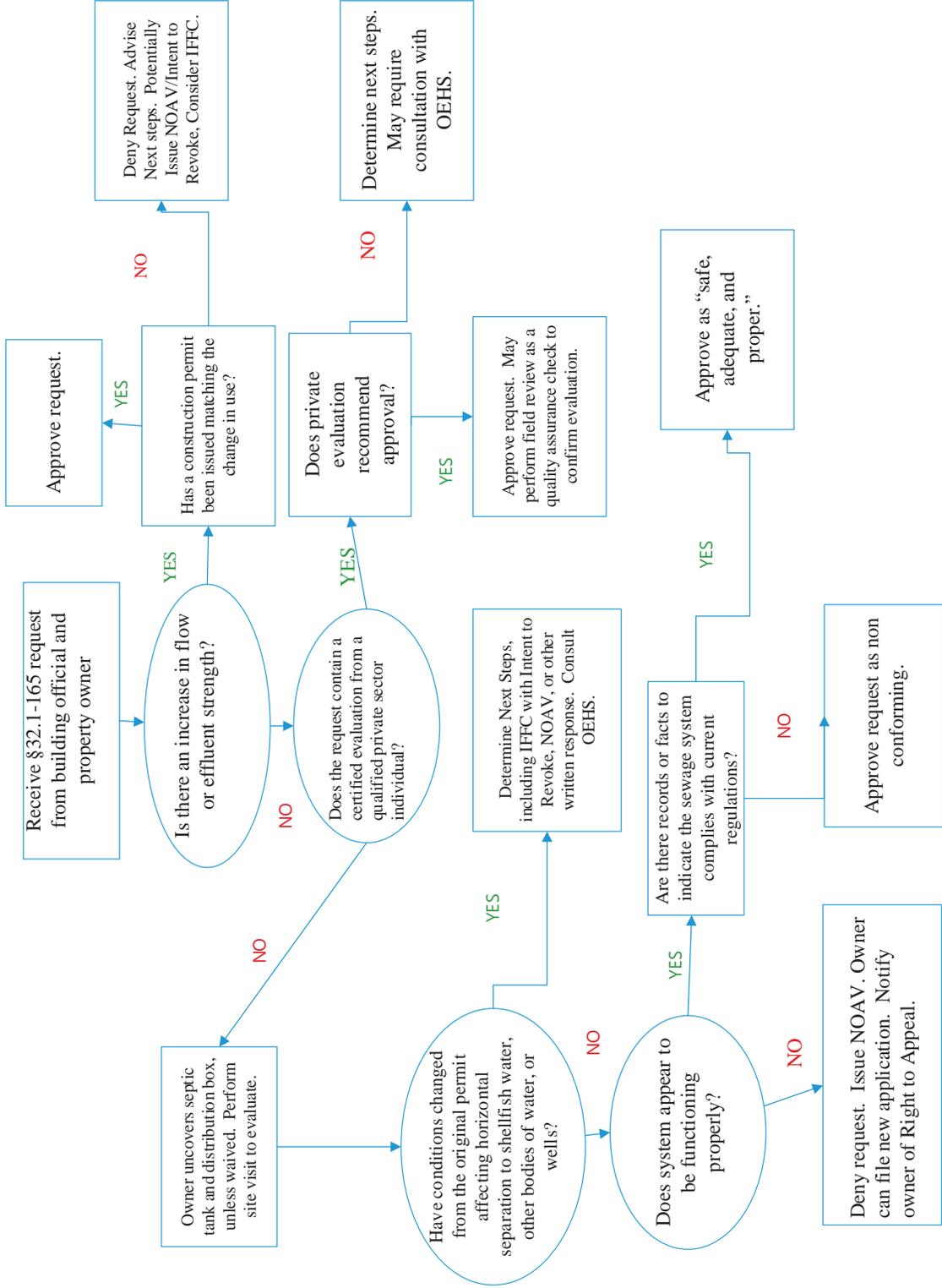
- 5. For an alternative discharging sewage system or an alternative onsite sewage system (AOSS), the owner should supply the most recent O&M records. If the request is within 12 months of the most recent operator report indicating the system is functioning properly, a site visit by VDH staff is not necessary. Staff should perform a site visit in accordance with guidelines established in GMP #2017-01 or successor policy, meaning at least 10% of each licensee’s work will be evaluated by completing a Level 2 (field) review. Upon review, staff may approve the system, either as “non-conforming,” or meeting current regulations, depending on the facts gathered from the files.

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

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

Attachment 1

Flow Chart: Review of Existing Systems



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



Request for Health Department Review

Building/Zoning Department Use Only:

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

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

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

Other or Comments:

Attachments (sketch, building plans, plat)

Building/Zoning Official Signature: _____

Date: _____

Note: This written application is not required if an electronic process is already in place for the local building official to request a SAP evaluation from the local health department.

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

Owner Name: _____	Home Telephone: _____
Mailing Address: _____	Office Telephone: _____
_____	Cell Phone: _____
e-mail address: _____	
Agent Name: _____	Home Telephone: _____
Mailing Address: _____	Office Telephone: _____
_____	Cell Phone: _____
e-mail address: _____	
Property Location (provide directions from local health department): _____ _____	
Tax Map: _____	PIN # _____
Subdivision Name (if applicable): _____	Lot # _____
Current Use (include # of Bedrooms): _____	
Proposed Use (include # of Bedrooms): _____	
Please attach any recent records of onsite system (Pump-outs, or Operation and Maintenance Reports).	
Has property been occupied during previous 30 day period: Y or N	
The septic tank and distribution box are uncovered for inspection: Y or N Components will be uncovered by _____ (date). (To prevent potential damage to the system VDH recommends homeowners first contact Miss Utility for marking any underground utilities. The septic tank and distribution box should be carefully excavated by hand.)	
Uncovering the septic tank and distribution box would cause an undue hardship: Y or N If Y reasons for hardship: _____	
(Examples of hardship: system is relatively new, recently pumped, accurate records exist, or excavation would likely damage components.)	
Related Building Permit #: _____ Health Department I.D.#: _____	
<u>PLEASE READ CAREFULLY:</u>	
This report is only intended to address the above referenced request and does not address evaluation procedures for sewage systems being sold through real estate transfers, or systems and water supplies being re-used as part of a subdivision process. This document specifically addresses VDH's implementation of § 32.1-165 of the Code of Virginia and is not to be used for any unauthorized use.	
The property boundaries and building locations are clearly marked or identified at the property. I give permission to the Virginia Department of Health to enter the property described, if necessary, for the purpose of processing this application. An accurate sketch of the property, existing structures, wells, sewage disposal systems, and proposed structure(s) is attached.	
Owner/Agent Signature: _____	Date: _____

Attachment 3a:

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

Name: _____

Phone Number: _____

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

Physical Address: _____

Is the existing onsite sewage system safe, adequate and proper or approvable as nonconforming for the proposed use?

(YES) Comments: _____

(NO) Comments: _____

Other Comments:

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

Turn Document Over for Site Sketch and Signature.

Site Sketch:

SIGNATURE: _____

DATE: _____

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

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

Name: _____

Phone Number: _____

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

Physical Address: _____

Section 1 Courtesy Review:

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

Comments: _____

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

Turn Document Over for Site Sketch and Signature.

Site Sketch:

Health Department Official Signature:

NAME: _____ SIGNATURE: _____

DATE: _____

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

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

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

Attachment 5:

Denial Letter

Page 1 of 2

<LHD address>

<Date>

<owner>
<owner address>

Certified Mail _____

RE: <property address>

Dear <owner>:

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

{INSERT REASONS, i.e.,

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

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

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

Sincerely,

Environmental Health Specialist

CC: Building Official

Attachment 6: **Draft NOAV Letter**

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

NOTICE OF ALLEGED VIOLATION

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

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

Certified Mail

Dear <OwnerName>:

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

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

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

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

This notice is to remind you that it is your responsibility, as owner of your property, to operate the facilities in accordance with the applicable laws and regulations of the State Board of Health

("Board"). The Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq., the "Regulations") and the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings Regulations (12 VAC 5-640-20 et seq., "Discharging Regulations") which contain the following provisions:

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

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

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

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

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

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

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

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

12 VAC 5-640-490.A. Monitoring. General. *Discharging systems that discharge improperly treated effluent can endanger public health and threaten environmental resources. All discharging*

systems shall be routinely inspected and the effluent sampled to determine compliance with the effluent limitations set forth by the State Water Control Board in the General Permit. All testing requirements contained in this chapter are the responsibility of the system owner to have collected, analyzed, and reported to the department.

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

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

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

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

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

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

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

D. Where to report results. All reports and test results shall be submitted to the local or district office of the health department. When formal testing indicates a discharge limit established in the General Permit is being exceeded or when informal testing indicates a discharging system may be in violation of the General Permit requirements, the maintenance provider shall be notified by the owner within 24 hours.

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

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

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

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

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

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

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

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

Sincerely,

<EHS>

Environmental Health Specialist

CC: <FacilityLocationCounty> County Commonwealth Attorney

<Director>Director Health District

Attachment 7: Data entry requirements for VENIS.

For entry of SAP request where no system information is currently in VENIS, complete all the steps below. For entry of SAP request with current information in VENIS, skip to number 3.

1. Create a physical location for the onsite sewage system. Use the same process as creating a new physical location for a construction permit application.

Physical Location - IBM Notes

File Edit View Create Actions Text Tools Help

Welcome Menu | B Manager | OEHS EHS Live - Main | Physical Location - X

New Create Update Facilities Save Done Cancel

Identification

Common Name	District	Sewage System Jurisdiction <input type="radio"/> Private <input type="radio"/> Public <input type="radio"/> None	Health Office
Water System Jurisdiction <input type="radio"/> Private <input type="radio"/> Public <input type="radio"/> None			

Legal Description

Property Identifier	Block	Tax Map #	Lot
Subdivision	GPW #	Section	Census Tract
Parcel #	District		

Global Position

Latitude	Degrees	Minutes	Seconds
	Decimal		
Longitude	Degrees	Minutes	Seconds
	Decimal		
Altitude		<input type="checkbox"/> Verified	Open in Google Earth
ISO6709			

License/Owner

New Choose Existing

*Choose from the existing Licensees/Owners first. If not listed create a new Licensee/Owner.
Please choose an existing Licensee/Owner or create a new Licensee/Owner.

Contact Information for Physical Location

10:43 AM
8/16/2017

2. Create a new sewage system. Enter available information for the existing onsite sewage system based on the permit on file, if available. The data entry must include the number of bedrooms for which the existing system was sized, as this information transfers to the existing system evaluation page.

New Sewage Treatment System - IBM Notes

File Edit View Create Actions Text Tools Help

Welcome Menu | E Manager | OEHS EHS Live - Main | Physical Location - 9876543210... | New Sewage Treatment System

New | Create | Save | Done | Cancel

Sewage Treatment System

Administrative | Design | Installed | Documents | Drawing | Maintenance

Facility Information

Name 98765432100000	EHS Lance Gregory	Administrative Status Active	File Active Date 16-Aug-2017
Facility ID LGRY-AQAKD3	Hide From web <input type="radio"/> Yes <input checked="" type="radio"/> No	Facility Operation Hours Open <input type="radio"/> Closed <input checked="" type="radio"/>	Under enforcement or probation <input type="radio"/> No

Licensee/Owner

New Choose Existing

*Choose from the existing Licensees/Owners first. If not listed create a new Licensee/Owner.

Name John Doe	ID LGRY-AQAKC8
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Application Details

Application Type	Permits/Letter Status	Health Department ID	Application Status
Conditional Construction Permit	Voluntary Upgrade		Active
Construction Permit Number			
Application Date	Calculated Application Date Due		

Connected to server Dogwood/HealthSpace

10:52 AM 8/16/2017

3. Create an existing system evaluation.

Existing System Evaluation			
Evaluation Information		EHS	
System Name	98765432100000	EHS	Lance Gregory
Evaluation Requested Date	16	Evaluation Date	16-Aug-2017
Next Visit Date	16	Reason for Evaluation	EHS
Comments			
Site and Building Information			
Designed Building Use	Residential	Observed Building Use	Is Property currently occupied?
Designed Number of Bedrooms		Structure Designed for Human Occupancy	Owner Affidavit Provided
Record of System on File		System Installed Legally	Completes with Current Regulations
Drawing	Import Drawing	Comments	
Add Canned Comment			
Sewage System Information			
Installed Date	16	Last Pumpout	Sewage System Permit Number
			Septic Type

When filling out the existing system evaluations:

- Evaluation Requested Date = Date request for HD review is received from building official.
- Evaluation Date = Date LHD staff perform their review (site visit date for bare applications, Level I/Level II review for private sector applications).
- Reason for Evaluation = Building Permit.
- Observed Building Use = Residential or Non-residential as appropriate.
- Is Property Currently occupied? = Yes, if owner noted that property has been occupied during previous 30 day period. No, if owner noted that property has not been occupied during previous 30 day period.
- Structure Designed for Human Occupancy = Yes, if the application was submitted pursuant to 32.1-165. No, if the application is for a courtesy review for a structure not designed for human occupancy.
- Owner Affidavit Provided = Yes, if an application was also received from the owner. No, if an application was not received from the owner.

- Record of System on File = as applicable.
- System Installed Legally = Yes, unless a NOAV will be issued for illegal installation.
- Complies with Current Regulations = Yes, if system will be approved as SAP. No, if system will be approved as non-conforming. Leave blank if system was installed illegally and NOAV will be issued.
- Drawing = Insert a scanned copy of the site sketch for the SAP review.
- For the “Sewage System Information” fields, enter information as applicable from records review and site visit. For “System properly functional?” enter “Yes” unless an NOAV will be issued for a failing system. For “Sewage Evaluation Results” only enter “Denied” when an NOAV will be issued for the existing system because: 1) the system does not comply with the regulatory requirements in effect at the time of its installation; 2) the system is failing; or 3) the system is not expected to function properly given its design and construction for the sewage flow and strength.
- For “Evaluation Conclusion”, under the “Summary” section, only enter “Denied” when an NOAV will be issued for the existing system because: 1) the system does not comply with the regulatory requirements in effect at the time of its installation; 2) the system is failing; or 3) the system is not expected to function properly given its design and construction for the sewage flow and strength.

Attachment 8:

MEMORANDUM OF AGREEMENT

June 27, 2013

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

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

Codes and Regulations: Adoption and Enforcement

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

Definitions:

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

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

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

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

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

Treatment works applicability

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

Reviews pursuant to Va. Code § 32.1-165

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

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

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

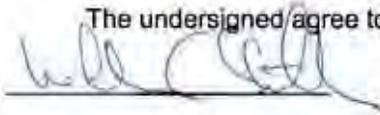
2. **Pursuant to Va. Code § 32.1-165**, the local building official may use the certification letter, subdivision letter, or construction permit to issue a building permit. The local building official understands that a treatment works cannot be constructed until the local health department issues a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

Conflict Resolution

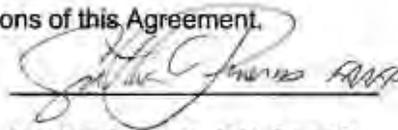
Both VDH and VDHCD will cooperate in resolving any technical conflicts between VDH regulations and the building code. The agencies will develop and implement procedures as needed to ensure collaboration between local building officials and local health departments. Appropriate amendments, edits, additions,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

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

The undersigned agree to the Conditions of this Agreement.



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



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