

## Attachment 2

Date

Owner Name  
Address  
City, State Zip

**Certified Mail**

Dear [Owner]:

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

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

The repair system for your property must use a pressure dosed system,<sup>3</sup> a system that provides secondary or better effluent<sup>4</sup>, or a system that provides both pressure dosing and secondary or better effluent [**Note: modify this paragraph to fit the specific situation**]. This requirement in the *Regulations* provides additional public health and groundwater protections where failed systems pose relatively high risks for human disease transmission.

Employees of the Virginia Department of Health (VDH) typically do not design sewage systems with SE or pressure dosing because of the complexity of these designs and the wide variety of brand-name products and equipment available. These types of designs require extensive consultation between the owner and an AOSE/PE to assure that

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<sup>1</sup> AOSE/PE means a Professional Engineer (PE) working in consultation with an Authorized Onsite Soil Evaluator (AOSE) or an AOSE.

<sup>2</sup> Septic Tank Effluent means "effluent characterized by a five-day biochemical oxygen demand between 120 and 200 mg/l; total suspended solids between 70 and 150 mg/l; fats, oils, and grease of 30 mg/l or less; and having no other toxic, hazardous, or constituents not routinely found in residential wastewater flows (*Regulations*, § 120)."

<sup>3</sup> Pressure Dosing means any system under the *Regulations* that requires a pump to pressurize a dosing system or device. Examples include drip dispersal, drip irrigation, manifold systems, mound systems, and low pressure distribution systems, etc. The definition does not include gravity systems, systems that pump to a higher elevation (distribution box with or without enhanced flow), or systems that require a pump because the ground surface over the soil absorption area is higher than the elevation of the lowest fixture in the house.

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

[Owner's Name]

[Date]

Page 2 of 4

the owner's needs are met. VDH does not have the resources to provide this extensive consultation and cannot choose specific products because of our regulatory relationship with all product manufacturers. You will need to retain the services of a qualified private designer to design your repair system. Currently, VDH recognizes PEs (licensed in the Commonwealth of Virginia) for any type of system design and AOSEs for certain system designs that do not require the practice of engineering.

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

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

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

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

[Owner's Name]

[Date]

Page 3 of 4

*requirements apply to your system, even if it does not appear to be failing at the time of transfer.* **[Note: This paragraph is not applicable in cases where owner is not eligible for a waiver.]**

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

Please remember that VDH does not have the resources to consider, inform, and consult with you about all of the design options available in the marketplace for a repair. There are hundreds of design options and hundreds of products from which to choose within each possible design. Depending on your specific needs, please consider that VDH might recommend a system that would not meet your immediate or long-term interests because of our lack of resources to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves requests from product manufacturers so we cannot recommend one product over another just as we cannot design or recommend a specific proprietary pre-engineered system. A private consultant would not necessarily have VDH's limitations and can propose specific products and provide more in depth consultation.<sup>5</sup>

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

You will soon receive (or have already received) a letter from this office notifying you that the failure of your sewage system may constitute a violation of the *Regulations*. Please follow any directions contained in that letter and carefully heed any time limits established for repairing your failing system. Because your sewage system has failed, your sewage system operation permit is null and void in accordance with 12 VAC 5-610-340 of the *Regulations*. As I mentioned earlier in this letter, you are required to have an operating permit in order to use an onsite sewage system and I encourage you to complete the steps necessary to get a new operating permit as quickly as possible.

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

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<sup>5</sup> Some private consultants are affiliated with only one product brand and may not provide you with a complete list of possible designs.

[Owner's Name]

[Date]

Page 4 of 4

an informal fact-finding conference) must be received in this office within 30 days from your receipt of this letter. Thank you for your prompt attention and action in this matter. Please call me at (\_\_\_\_) \_\_\_\_ - \_\_\_\_ if you have more questions.

Sincerely,

EHSS

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