



COMMONWEALTH of VIRGINIA

Department of Health

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September 1, 2017

TO: District Health Directors and Environmental Health Managers

THROUGH: *for* Marissa J. Levine, MD, MPH, FAAFP
State Health Commissioner *[Signature]*

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

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

SUBJECT: GUIDANCE MEMORANDA AND POLICY 2017-02

Introduction

GMP-2017-02 revises and combines GMP 2004-01 (GMP-128) and GMP 2011-02 (GMP-155). **GMP 2004-01 and GMP 2011-02 are hereby rescinded.**

Purpose

The purpose of this policy is to (1) aid staff in correctly identifying permit applications as voluntary upgrade or repair permit applications; (2) clarify what type of voluntary upgrade or repair activities require full compliance with the State's regulations; (3) identify when a permit application may require a treatment waiver under the Code of Virginia; and (4) provide staff with a clear process for issuing treatment waivers.

Responsibility and authority for implementing Code § 32.1-164.1:1.B is hereby delegated to the district environmental health manager and/or the environmental health supervisor.

Definitions (From 12VAC5-620)

"Voluntary upgrade" means an improvement to an existing onsite sewage disposal system or alternative discharging system that (i) is not required for compliance with any law or regulation and (ii) results in no net increase in the permitted volume or strength of sewage dispersed by the system.

"Repair" means the construction or replacement of all or parts of a sewage disposal system or private well to correct a failing, damaged, or improperly functioning system or well when such construction or replacement is required by the board's regulations.

Legislative Background

The 2004 General Assembly passed House Bill 930 (Acts of Assembly, Chapter 916, 2004) which amended § 32.1-164.1:1 of the Code of Virginia (Code). GMP 2004-1 (GMP-128) outlined procedures for processing applications for repair permits pursuant to Code § 32.1-164.1:1.B and 12VAC5-610-280.C.2. Waivers to treatment and pressure dosing were made available to owners repairing failing sewage systems. Legislation approved in 2011 (Acts of Assembly, CH. 394) amended and reenacted Code § 32.1-164.1:1 and added Code § 32.1-164.1:3, which governs permits for voluntary system upgrades. Permits issued pursuant to Code § 32.1-164.1:3 are subject to the provisions of Code § 32.1-164.1:1. Waivers issued by the Virginia Department of Health (VDH) pursuant to these Code sections must be recorded in the land records of the jurisdictional circuit court. GMP 2011-02 (GMP-155) outlined procedures for issuing voluntary upgrade permits. Waivers to treatment and pressure dosing were made available to owners electing to upgrade non-failing sewage systems. Treatment required for alternative discharging systems by the Department of Environmental Quality cannot be waived. Legislation approved in 2015 (Acts of Assembly, CH. 111) amended and reenacted Code § 32.1-164.1:1. Waivers for voluntary upgrades were made available to owners who received repair waivers between July 1, 2004, and December 6, 2011. GMP-2017-02 outlines procedures for issuing repair permits and voluntary upgrade permits in accordance with Code §§ 32.1-164.1:1 and 32.1-164.1:3, respectively. In addition to treatment waivers for reductions in biochemical oxygen demand (BOD₅), total suspended solids (TSS), and pathogens, treatment waivers may also be used for requirements to reduce nitrogen.

General – Existing System Evaluations

In order to ascertain whether a system requires a repair or a voluntary upgrade, the designer must conduct a systematic and consistent evaluation of the onsite wastewater treatment system. For repairs and voluntary upgrades, the designer must complete the Existing System Evaluation Form (see GMP 2017-01).

The basic steps are:

1. Document the file information regarding the owner, the site, and the system description.
2. Document the current use and current condition.
3. Make final recommendations for repair or voluntary upgrade based on the assessment.

Typically each system component is located and examined. The potential exception to this is if the system has been recently inspected, a recent operation and maintenance (O&M) record is on file, and/or an obvious event occurred that damaged a component. A soil evaluation is needed if:

1. The drainfield is showing signs of stress or is failing;
2. An increase in treatment level is proposed;
3. A modification to the drainfield is proposed such as moving or adding trenches; or
4. An expansion is proposed.

General – Repair Permits

Repair permits are issued when either a system is failing pursuant to 12 VAC5-610-350 (Failure of a sewage disposal system: *Sewage Handling and Disposal Regulations* 12VAC5-610-10 et seq., as amended July 1, 2000 (SHDR)), or when required to restore the system to normal function as defined in the construction and operation permit pursuant to 12VAC5-610-340 (Issuance of the operation permit). A Notice of Alleged Violation (NOAV) should always be associated with a repair permit. If the activity is not required and an NOAV is not appropriate, then a repair permit is not appropriate. When a repair permit is issued prior to a NOAV being issued, then the NOAV format found in Attachment 1 is appropriate which acknowledges the owner's willingness to initiate the repair. Proactive replacement, not required by the Department, of existing components with like components may qualify as a voluntary upgrade if the system is still functioning as designed. Owners who receive repair permits may qualify for waivers from the SHDR and the *Regulations for Alternative Onsite Sewage Systems* (AOSS Regulations) (12VAC5-613-10 et seq., effective December 7, 2011) collectively, the "Regulations". See Attachment 2 to determine the type of system repair that triggers compliance with all current regulations. Not all repair determinations are straight forward, and occasionally distinguishing between a repair and a voluntary upgrade requires an investigation of both department records and a system evaluation. Completing the Existing System Evaluation form will aid in this determination (See GMP 2017-01). See GMP 2016-02 (Fee Regulations Implementing Policy) for additional guidance on identifying the appropriate permit type. The Process Flow Charts in Attachment 3 will also aid in determining the appropriate permit type and the associated process.

Section 32.1-164.1:1.B of the Code offers financial relief (a waiver) to the current owner of a property whose onsite system is failing, and a repair includes new requirements for additional treatment, pressure dosing, or both, provided the sewage system is on or serves real property consisting of not less than one nor more than four dwelling units. The waiver is not available to commercial sites or sites with more than four dwellings. In practical terms, a system originally permitted to disperse treated effluent (advanced treatment beyond a conventional system), as opposed to septic tank effluent, must be repaired using similarly advanced treatment. The owner of such a system is ineligible for a waiver from the same *treatment* requirements of the Regulations. That owner, however, would be eligible for a waiver from additional treatment requirements or pressure dosing, as long as the original permit did not require pressure dosing. The obverse applies to a system originally permitted for pressure dosing - the owner is ineligible

for a waiver from pressure dosing. Finally, an owner with a system originally permitted for both pressure dosing and advanced treatment may be ineligible for a waiver, dependent upon the level of treatment originally required.

A qualified owner may request a waiver and the State Health Commissioner shall grant same unless the Commissioner finds “the failing system was installed illegally without a permit.” Except as provided in Code § 32.1-164.1:1.C, repair waivers shall not be transferable and shall be null and void upon transfer or sale of the property on which the onsite sewage system is located. Additional treatment or pressure dosing requirements shall be imposed when the waiver through transfer or sale of the property is rendered null and void. To obtain a new operating permit, the new owner must comply with the waived regulatory requirements, as well as any subsequent requirements imposed since recordation of the waiver.

An owner must submit an application for a repair permit. No fee is required.

Any owner who receives a waiver must record the waiver in the land records of the clerk of the jurisdictional circuit court.

Historically, 12VAC5-610-280.C.2 of the SHDR provided the district health director or environmental health manager discretion, in cases of economic hardship, to waive the requirement for pre-treating effluent in the case of a construction permit for repair. The Code changes eliminate this discretion. This policy shall be used in lieu of 12VAC5-610-280.C.2 when processing an application to repair a failing sewage system, as Code § 32.1-164.1:1 specifically authorizes VDH to waive certain regulatory requirements when addressing failing onsite systems. An exception for site and design items not covered by the waiver may be granted in accordance with 12VAC5-610-280.C.2.

To ensure the Commissioner provides the financial relief intended by law, VDH personnel will continue to design, to the extent possible, regulatory compliant, gravity-flow or simple pump septic tank effluent systems if requested by the owner. This policy shall not be construed as imposing any obligation on VDH staff to provide consulting services, minimize or maximize an owner’s financial liability, or guarantee any system designed and permitted by VDH will function for a specified period of time. All stakeholders must understand that systems designed with a waiver under Code § 32.1-164.1:1.B do not comply with the regulatory requirements for new construction, nor do those designs meet the industry’s current expectations for system designs. The owner is responsible for determining whether he is best served with a repaired system in accordance with Code § 32.1-164.1:1.B and this policy, or adhere to new construction standards for onsite systems.

Procedures – Repair Permits

The responsible Environmental Health Specialist Senior (EHSS) or an Environmental Health Specialist (EHS) in consultation with an EHSS will determine whether an owner qualifies for a waiver under § 32.1-164.1:1.B as part of the routine processing of a repair application.

For bare applications, Attachment #4 is a letter notifying the owner of the requirement(s) for additional treatment and/or pressure dosing, if applicable, and opportunity to request a waiver to those requirements. This letter should be sent to the owner after receipt of a bare application. This letter constitutes a denial of the requested conventional system and provides appeal rights, but also provides the owner with alternate solutions of a waiver and private sector design. This suggested letter should be applicable to the majority of cases local health departments resolve, but should not be sent when an application is received with supporting private sector documentation.

Prior to sending a letter by certified mail notifying an owner his request for a conventional permit is denied, but he is eligible for a waiver, the EHSS must determine whether the failing system was installed illegally without a permit. If the EHSS finds substantial evidence indicating the system was installed illegally without a permit, he should immediately inform the appropriate VDH supervisory personnel to initiate enforcement proceedings. As mentioned earlier, such determinations are not always straightforward and occasionally require a vigorous investigation, including document review and a site and soil evaluation. The letter in Attachment #4 does not apply to systems installed illegally without a permit.

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

An owner seeking a repair waiver must return the properly executed waiver request and agreement found in Attachment #5. When properly executed by the owner, Attachment #5 constitutes the request for waiver and the waiver itself. The waiver must be properly executed before a construction permit is released. When the owner produces written proof (certification) he recorded the waiver in the land records in accordance with Code § 32.1-164.1.B, VDH will issue the construction permit.

An owner may receive multiple repair permits under a waiver until the waiver is null and void upon transfer or sale of the property. Owners granted a repair permit for a failing system with a waiver are ineligible for a voluntary upgrade permit, since the system does not meet current requirements (i.e. failing). An owner may, at any time, bring a system into full compliance by completing repairs originally waived and complying with any additional regulatory requirements promulgated by VDH since the date of waiver recordation.

Exception:

Any owner who (a) obtained a waiver to repair a failing onsite sewage system pursuant to Code § 32.1-164.1:1.B on or between July 1, 2004, and December 6, 2011, (b) completed such repair, and (c) desires to voluntarily upgrade the system, may request, and shall receive, a

voluntary upgrade waiver in accordance with Code §§ 32.1-164.1:1 and 32.1-164.1:3. Any such waiver shall be recorded in the land records of the clerk of the circuit court in the jurisdiction where the onsite sewage system is located and shall supersede any prior waiver recorded pursuant to Code § 32.1-164.1:1.B.

General – Voluntary Upgrade Permits

Owners of onsite and alternative discharging sewage systems may also upgrade those systems operating as designed and not failing. Requests to voluntarily upgrade typically arise during real estate transactions when a private inspector indicates an existing sewage system is not performing optimally, an individual component exhibits signs of wear, or when an owner desires to enhance the performance or extend the life of a system. Historically, VDH was unable to issue permits to many owners as site conditions did not meet the minimum regulatory requirements and the repair clauses of controlling regulations were inapplicable; as by definition, the systems did not fail. The change to the Code allows VDH to issue construction permits for voluntary upgrades of non-failing, functioning systems using the same rules already in place for failing systems. See GMP 2016-02 for additional examples and discussion of voluntary upgrades. The Process Flow Charts in Attachment 3 will also aid in distinguishing between repairs and voluntary upgrade applications.

Under Code § 32.1-164.1:3, a voluntary upgrade must conform to the laws and regulations for repairing failing systems and requires compliance with current regulations. Where compliance with the Regulations would require the use of additional treatment or pressure dosing not required by the original construction permit, the property owner may request a waiver from additional treatment and/or pressure dosing provided the sewage system is on or serves real property consisting of not less than one nor more than four dwelling units. Upon request, the Commissioner shall grant a waiver if these requirements are met unless the system was installed illegally without a permit. Unlike waivers granted to repair failing onsite sewage systems, waivers granted for voluntary upgrades are fully transferable upon sale of the property. All voluntary upgrades must be for the purposes of reducing threats to public health or to ground and surface waters. Proactive replacement of system components reduces threats to public health or to ground and surface waters. See Attachment 2, to identify voluntary upgrade construction permits eligible for a waiver to current regulations.

Applicability for Voluntary Upgrades Permits

This policy section provides guidance for VDH staff and the public for implementing the provisions of Title 32.1 regarding voluntary upgrades of onsite and alternative discharging sewage systems. This policy applies to the voluntary upgrade of any legally installed onsite sewage disposal system or alternative discharging sewage system that is **not failing**. Upgrades shall be for the purposes of reducing threats to public health or to ground and surface waters. VDH personnel must review voluntary upgrade applications mindful of the considerations below:

- An owner may receive multiple voluntary upgrade permits under a waiver until the waiver becomes null and void upon system failure.

- Owners who receive a voluntary upgrade waiver are eligible for a repair waiver in the event of system failure.
- Existing dwellings may or may not be occupied.
- There shall be no proposed increase in flow or strength of sewage from that currently permitted. Any increase in sewage flow or strength requires the owner to modify an existing system, thereby making it ineligible for a permit under the voluntary upgrade statute.
- System modifications or upgrades required *for any reason*, including building expansions, replacement of faulty components, returning the system to function as designed, and the repair of failing systems are involuntary and are ineligible for a voluntary upgrade construction permit.
- Voluntary upgrade permits cannot be used as a means to approve new construction activities. Voluntary upgrade decisions are independent and do not commit VDH to future decisions concerning sewage system approvals.
- Owners who request conditional permits to limit occupancy, reduce flow, etc. are proposing changes to their dwellings (not simply upgrading their sewage systems); therefore, the proposals are not voluntary (require a conditional permit and permit fee) and are ineligible for voluntary upgrade permits.
- All applications for voluntary upgrade permits must include an Existing System Evaluation of the system components using the form in GMP 2017-01. All bare applications for voluntary upgrades require a site visit by an EHSS or EHS to ensure compliance with the statute and to complete an Existing System Evaluation form. The site visit may range from a drainfield walk-over and consultation with the owner or owner's agent, to a full level II review depending on the nature of the proposed upgrade. This procedure is to ensure the system is not failing, was not installed illegally, the proposed activity is not required by law, and the proposed system modification or construction qualifies for a voluntary upgrade permit. Applications for voluntary upgrade permits with supporting documentation from private designers must include a completed existing system evaluation form. All voluntary upgrade applications must include a description of the 'improvement' provided by the voluntary upgrade. An EHSS or EHS should conduct a site visit for a voluntary upgrade application from a private designer when a new or modified drainfield is proposed. For other proposals, the EHS may use their discretion, depending on the completeness of the supporting documentation.
- Proposals to relocate remote drainfields to the owner's property or a different site are not automatically voluntary upgrades; and are generally new construction. The Code requires a voluntary upgrade design to be for the purposes of reducing threats to the public health or to

ground and surface waters. If the current site and system design meet the regulations to a greater extent than a new site with a design that includes a treatment or pressure dosing waiver, the waived design on the new site may not reduce threats to public health or to ground water. On the other hand, a design with treatment, pressure dosing, shallow placement, etc. may reduce threats, as would a new drainfield site with significantly better soils for treating and dispersing effluent. The answer is design dependent and requires in depth evaluation. Merely relocating a system to another site does not necessarily reduce threats to public health or to ground and surface waters and as a result, may be ineligible for a voluntary upgrade permit.

- Owners electing to upgrade their onsite sewage disposal systems that are on or serve real property consisting of more than four dwelling units or commercial establishments may receive a voluntary upgrade permit. Waivers for treatment or pressure dosing are not applicable.
- The evaluation of whether a proposed voluntary upgrade reduces threats to the public health or to ground and surface waters is made of the system design as proposed. Any waivers to treatment or pressure dosing must be considered in the evaluation.
- The Department has been liberal in its interpretation of what constitutes a voluntary upgrade in order to encourage improvements. Examples of voluntary upgrades follow.
 - Replacement of a non-failing component with a new component.
 - New trenches are better than old trenches if the absorption area is at least as large as the existing drainfield and at the same depth or shallower than the existing drainfield.
 - New trenches at the same depth, same size, but farther away from shellfish waters are an upgrade.
 - When existing trenches are in the water table and new trenches are also proposed in the water table, but at a deeper depth, those still are considered an upgrade unless its evident that the design increases the potential for threats to public health and surface waters.

Procedures – Voluntary Upgrade Permits

VDH accepts applications and designs for voluntary upgrades of onsite and alternative discharging sewage disposal systems. **All applications must include a description of the nature of the voluntary upgrade requested.** Application fees are waived following 12VAC5-620-80.C and GMP 2016-02. Applications will be reviewed following current VDH policy. Voluntary upgrade applications may be granted an exception for site and design items not covered by the waiver in accordance with 12VAC5-610-280.C.2. Substantial compliance is required concerning setback distances to shellfish waters and drinking water wells unless the existing sewage system is already closer, in which case the upgraded system shall not be closer than the existing system. In determining whether a proposed upgrade complies with 12VAC5-280.C.2 (i.e. complies to the greatest extent possible) it is acceptable to include the existing non-failing drainfield in any calculation of required trench-bottom area when continued use of the existing drainfield is proposed.

If site conditions in any new soil absorption area require additional treatment or pressure dosing not required by the original permit for the existing sewage system, the owner may request a waiver provided the sewage system is on or serves real property consisting of not less than one nor more than four dwelling units.

When staff receives a bare application and determines that additional treatment and/or pressure dosing are required, the responsible EHSS is to send the letter in Attachment #6 to the owner notifying the owner of the requirement(s) for additional treatment and/or pressure dosing and that a waiver is available. This letter constitutes a denial of the original bare application for a conventional permit but also provides resolution steps such as the waiver or private sector design. This suggested letter should be applicable to the majority of cases local health departments resolve. In these cases the owner may elect to ask VDH to design a system eligible for voluntary upgrade permitting because the system requires additional treatment or pressure dosing. The owner may also choose to hire a private sector designer to prepare plans and specifications for the voluntary upgrade system.

An owner requesting a waiver must return the properly executed waiver request and agreement found in Attachment #7. When properly executed by the owner, Attachment #7 constitutes the request for waiver and the waiver itself. The waiver must be properly executed before VDH issues a construction permit. The owner must produce written proof (certification) of waiver recordation in the land records in compliance with Code § 32.1-164.1:1.B, prior to issuance of the construction permit.

Owners who apply for voluntary upgrade permits via a bare application must indemnify and hold harmless VDH prior to the issuance of a construction permit. Release, hold harmless, and indemnification agreements (see Attachments #8A and 8B) are not required to be recorded, though endorsements shall be notarized. Attachment 8A is the agreement when a waiver is issued and 8B contains the agreement for when there is no waiver. The release, hold harmless, and indemnification agreements are NOT required for applications prepared by the private sector. All construction permits issued for voluntary upgrades shall have the following statement attached: **"The upgrades specified in this construction permit are voluntary and not required by law."**

Attachment #9 is an informational letter for any owner who (a) obtained a waiver to repair a failing onsite sewage system pursuant to Code § 32.1-164.1:1.B. on or between July 1, 2004, and December 6, 2011, (b) completed such repair, and (c) wishes to voluntarily upgrade their system.

Operation Permits

Current Regulations require VDH to issue an operation permit whenever a construction permit is issued and construction is verified as complete. Unless the project is required to fully comply with current Regulations because treatment level advances over that previously provided or the drainfield is modified, performance standards in the operation permit are unchanged.

In some cases, the operation permit auto-generated by VENIS may impose unintended requirements. For example, a pump station at a large alternative onsite sewage system, installed in 2004, has to be rebuilt. According to Appendix 2, this type of repair would not require an upgrade of the entire system to comply with all current Regulations. However, a large AOSS will trigger VENIS to auto-generate a renewable operating permit. The EHSS must manually modify the generated operation permit to reflect a standard operation permit without the renewable clause.

Voiding a Waiver

There are times when a waiver to treatment or pressure dosing that has been issued and duly recorded may be voided. A waiver may be voided when a permanent solution for sewage disposal is implemented that fully complies with applicable laws and regulations. One of the most common examples of this is connection of the property to public sewer. Attachment #10 is a state form that can be updated, edited, and signed by the local health director to void a recorded waiver. The property owner may record this document into the land records.

VENIS Entries

Repairs and voluntary upgrade permits with waivers are entered the same as any other construction permit. For repairs, on the administrative tab select “Repair Permit” as the application type.

The screenshot displays the VENIS software interface. The main window is titled 'Licensee/Owner' and shows a form for 'John Doe' with ID 'LGRY-AQAKC8'. The 'Application Details' tab is active, showing fields for 'Application Type' (set to 'Conditional Construction Permit'), 'Permit/Letter Status' (set to 'Voluntary Upgrade'), and 'Application Dates'. A 'Select Keywords' dialog box is open over the 'Application Type' field, listing options: 'Construction Permit', 'Single Lot Certification Letter', 'Multi-lot Certification Letter', and 'Subdivision Review'. The 'Construction Permit' option is highlighted. The 'Application Status' is 'Active'.

If the owner is receiving a waiver, then on the design tab check “Yes” for “HB 930 Waiver Granted”.

Sewage Treatment System			
Administrative Design Installed Documents Drawing Maintenance			
General Information			
Submitted under HB 1166 <input type="radio"/> Yes <input checked="" type="radio"/> No	Site Permittable For GMP 147 Variance <input type="radio"/> Yes <input checked="" type="radio"/> No	Variance <input type="radio"/> No <input checked="" type="radio"/> Yes	HB 930 Waiver Granted <input checked="" type="radio"/> Yes <input type="radio"/> No
Soil Drainage Management Property <input type="radio"/> No <input checked="" type="radio"/> Yes		Betterment Loan Eligibility Request <input type="radio"/> Yes <input checked="" type="radio"/> No	Betterment Loan Eligibility Affirmed <input type="radio"/> No <input checked="" type="radio"/> Yes
Comments Add Canned Comment			
Chesapeake Bay Preservation Act			
Will the Sewage System reside on a property governed by the CBP Act? <input type="radio"/> Yes <input checked="" type="radio"/> No		Designation Status <input type="radio"/> Yes <input checked="" type="radio"/> No	
Evaluated By			
Evaluated By Title EHS		Evaluated By Name	
EHS Job #		EHS Report Certification Date 16	
Design Information			
Designed By Title EHS		Designed By Name	
Alternative or Conventional			

For voluntary upgrades, on the administrative tab select “Construction Permit” as the application type. Then select “Yes” for “Voluntary Upgrade”. This will give you the option to enter additional information regarding whether a voluntary upgrade waiver was requested and granted.

Sewage Treatment System		
Administrative Design Installed Documents Drawing Maintenance		
Facility Information		
Name 123456789000000	EHS x Unassigned	Administrative Status Active
Facility ID LGRY-95LKLR	Hide From web <input type="radio"/> Yes <input checked="" type="radio"/> No	Facility Operation Hours Open: [] Closed: []
Licensee/Owner		
<input type="button" value="New"/> <input type="button" value="Choose Existing"/> <input type="button" value="View"/> <input type="button" value="Open In Business View"/>		
*Choose from the existing Licensees/Owners first. If not listed create a new Licensee/Owner.		
Name Bob Joe	ID LGRY-8WHL9E	
Application Details		
Application Type Construction Permit	Permit/Letter Status Installed	Health Department ID 12-123-4321
Conditional Construction Permit <input type="radio"/> No <input checked="" type="radio"/> Yes	Voluntary Upgrade <input type="radio"/> Yes <input checked="" type="radio"/> No Waiver Requested <input type="radio"/> Yes <input checked="" type="radio"/> No Waiver Granted <input type="radio"/> Yes <input checked="" type="radio"/> No	
Construction Permit Number		
Application Dates		

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- Attachment 10. Document to void a recorded waiver

Attachment #1 – (Recommended NOAV When Repair Permit is Issued)

<OfficeName>
<OfficeAddress>
<OfficeCity>, <OfficeProvince>
<OfficePostalCode>
<OfficePhone> Voice
<OfficeFax2> Fax

<Today>

<OwnerContactFirst> <OwnerContactLast>
<OwnerMailingAddress>
<OwnerMailingCity>, <OwnerMailingProvince> <OwnerMailingPostalCode>

Certified Mail

Re: Tax Map/GPIN #: <LegalDescriptionTaxID> <LegalDescriptionGPIN>
Address: <PhysicalBuilding> <PhysicalStreet>,
<PhysicalCity>, <PhysicalMunicipality>, <County>, <PhysicalProvince>
<PhysicalPostalCode>

Dear <OwnerContactFirst> <OwnerContactLast> :

Thank you for contacting this office regarding the failure of your sewage system. You report certain conditions on your property that may constitute threats to public health and the environment. They include the following:

- On _____<YD#Today>, property owner _____ sent concerns about the discharge of raw or partially treated sewage on the ground surface of her property to _____the local health department.
- On _____ <YD#Today>, the local health department received a call from property owner _____ concerning the presence of raw or partially treated sewage on the ground's surface of his property.
- On _____, <YD#Today> _____ Environmental Health Specialist with the local health department visited the affected properties to investigate. During his visits, _____ observed that the onsite sewage system serving the properties appeared to have discharged raw or partially treated effluent onto the ground surface.

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

Please be aware 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") and that violations of the laws and regulations may result in enforcement actions provided under Title 32.1 of the *Code of Virginia*. The *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20 et seq., the "*Regulations*") 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 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.*

The local health department recognizes that you have obtained a repair permit to correct the reported violations of the Regulations. This repair must be completed and all documents required to issue the operation permit be submitted to the local health department within 60 days of receipt of this letter. This letter serves as your Notice of Alleged Violation (NOAV), if you do not complete the repairs within the applicable time frame, you may be subject to enforcement action pursuant to Title 32.1 of the Virginia Code. Should you require more than 60 days to complete your repair, please contact <EH Manager> at <>.

This letter sets forth the local health department's observations and recommendations and provides notice that if you fail to proceed with your repair permit and correct the reported and/or observed regulatory violations, the Commissioner may pursue enforcement action in accordance with Title 32.1 of the Code of Virginia. This letter 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 (IFFC) pursuant to §2.2-4019 of the *Code of Virginia*, please contact <HealthDirector> <HealthRegion> Director, at <OfficePhone> within fifteen (15) days of the receipt of this letter. The purpose of an IFFC is to determine if the regulatory violations alleged above occurred, and to discuss options to gain compliance. During the proceeding, you may be accompanied by counsel to assist you with the informal presentation of factual data, arguments or proof associated with the case. Additionally, you are entitled to receive advance notice of any facts, documents, or information in VDH's possession that could be relied upon in making an adverse determination.

Please feel free to call me at <OfficePhone> if you have any questions or if you wish to discuss this matter.

Sincerely,

<EHO>
<EHOPosition>

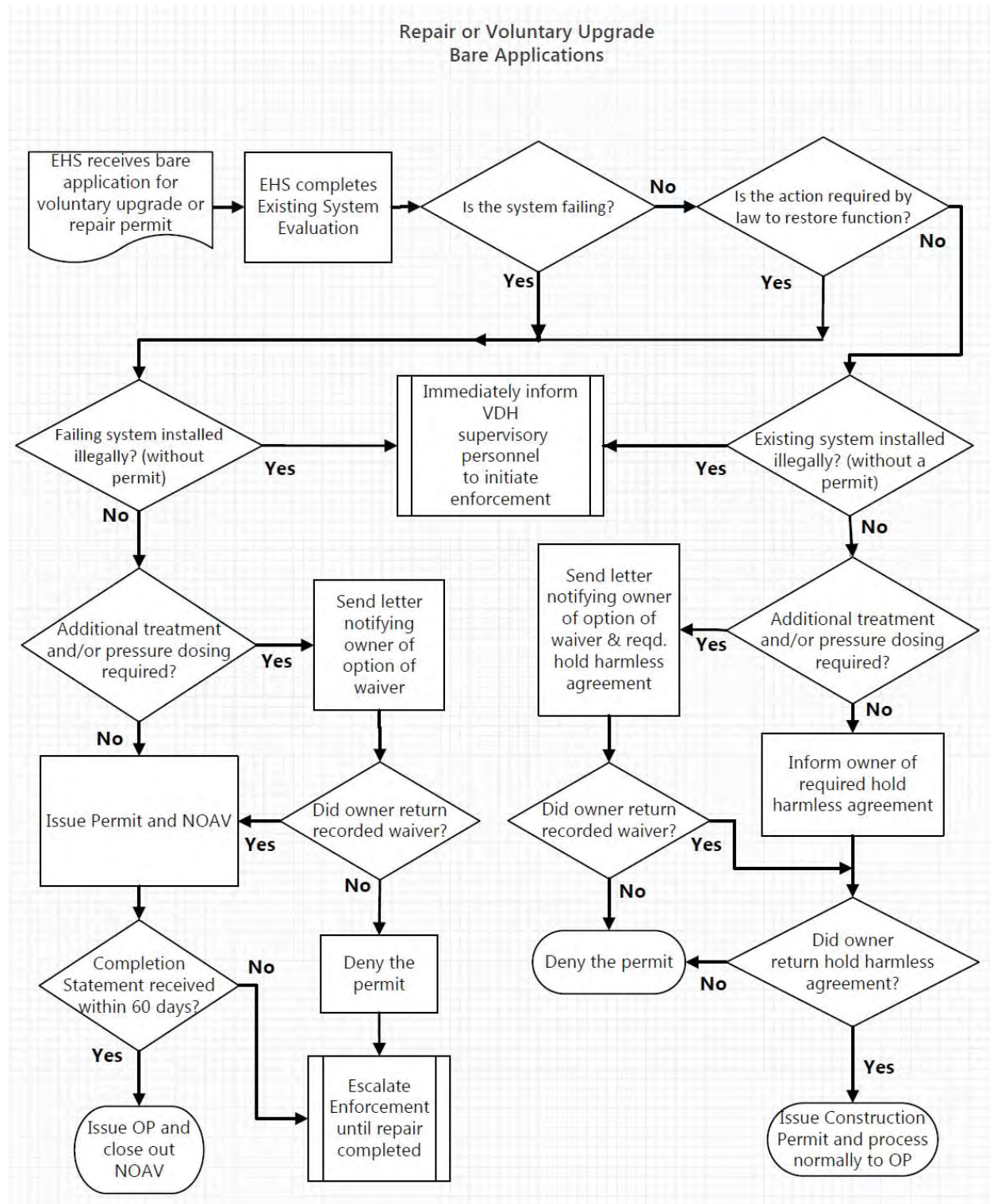
Attachment #2 – (Identifying When System Compliance with Current Regulations is Required)

The following table is intended as guidance to determine when a system upgrade to current regulations is triggered for a proposed project. The worst case scenario will dictate whether compliance with current regulations is required and waivers to treatment or pressure dosing may apply. When the ‘as-is’ condition is maintained with the proposed work, then compliance with new regulations is not triggered. Maintaining the as-is condition allows owners of older systems to replace their treatment units (TL-2 for TL-2 or TL-3 for TL-3) without requiring additional treatment, such as nitrogen reduction. The ‘as-is’ condition is changed when the treatment level is modified and the dispersal field is modified, replaced, or expanded. In those cases, the system will be required to be upgraded to current regulations unless a waiver is used.

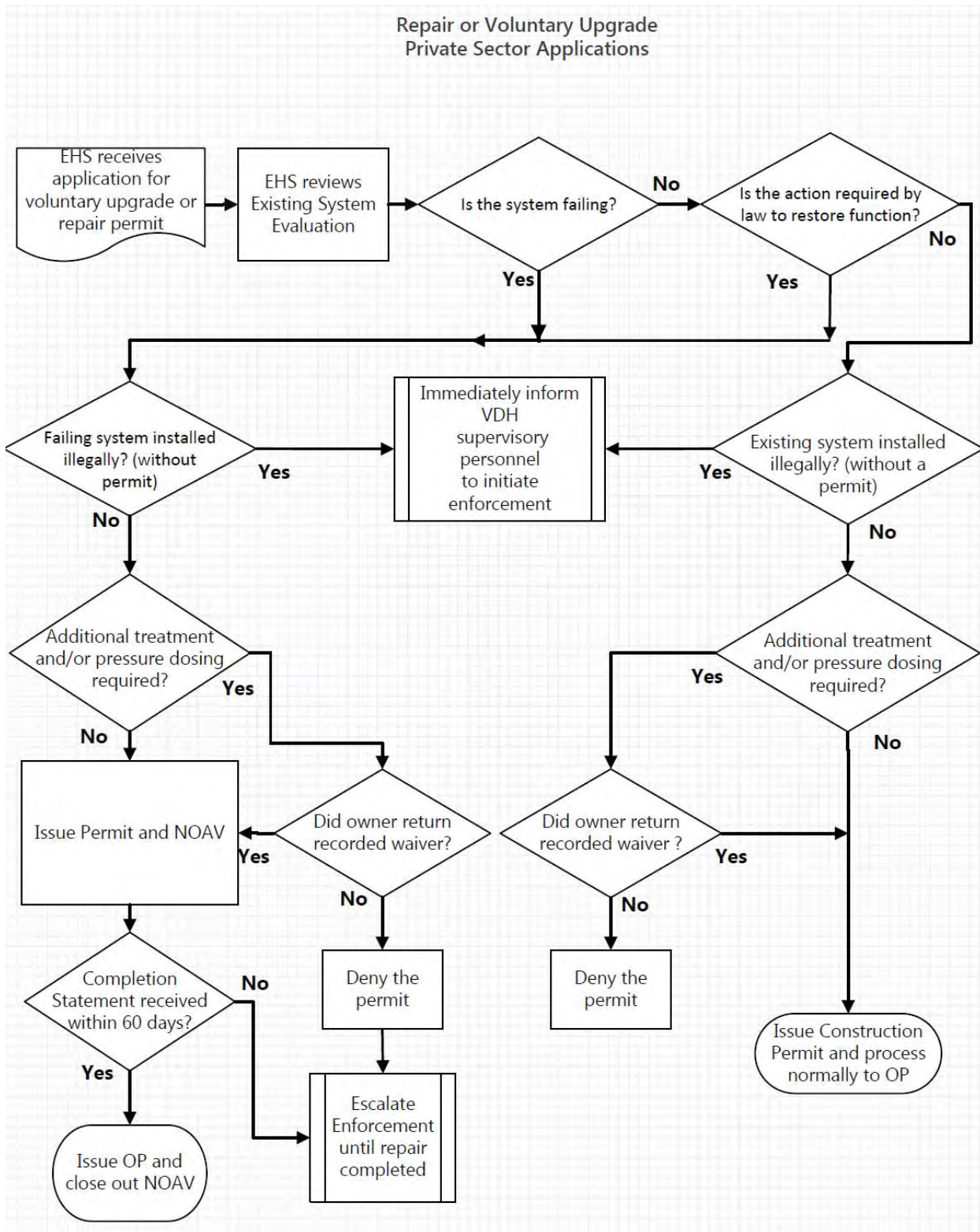
Application Type	Example Work	Must the sewage system comply with current regulations*?
Repair or Voluntary Upgrade	<ul style="list-style-type: none"> • Repair or replace one or more of the following sewage system components: sewer line, septic tank, tees in the septic tank, distribution box, conveyance line, or header line. • Repair or replace dispersal field piping with no change to soil loading rate or soil infiltrative surface • Replace a TL-2, TL-3 treatment unit (same treatment level, does not have to be the same manufacturer) (maintain as-is condition) 	No (New component must comply with current regulations. For example, a new septic tank should have 48 hour detention time.)
Repair or Voluntary Upgrade	<ul style="list-style-type: none"> • Replace or add to the dispersal field • Improve the treatment level (no change to dispersal field - improving the as-is condition) 	Yes (site and soil analysis needed to determine level of treatment required. Waivers may apply.)
New Construction (fee)	Installation of new treatment works in its entirety	Yes. Treatment waivers do not apply to new construction.
New Construction Minor Modification (fee)	Add a new connection to an existing sewage system to serve a garage bathroom, such as a new sewer line or septic tank without increasing wastewater flow or strength. (modifications to soil dispersal field are ineligible for a minor modification)	No (New component must comply with current regulations. For example, a new septic tank must have 48 hour detention time.)
Conditional Permit (paper expansion) (fee)	No change in system design or system components	No

*Exceptions for design components other than pressure dosing or treatment level, granted in accordance with 12VAC5-610-280.C.2., can be used to obtain compliance.

Attachment 3A - (Process Flow Diagram – Bare Applications)



Attachment 3B - (Process Flow Diagram – Private Sector Applications)



Attachment #4 - (Letter to Owner Regarding Repair Application and Potential for Waiver)

Date

Owner Name
Address
City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] Health Department received your application for a sewage system repair permit which did not include supporting documentation from a licensed onsite soil evaluator (“OSE”) or professional engineer (“PE”). Based on our site and soil evaluations (copy attached), the conditions on your lot may not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended August 25, 2016) (“SHDR”) for a Septic Tank Effluent (STE) system for the following reasons:

(Choose one or more or add as appropriate.)

1. Insufficient depth to a limiting factor such as the seasonal water table, a restrictive horizon, rock, etc.
2. Insufficient horizontal separation from well, shellfish waters, etc....
3. Insufficient area of suitable soil.

The repair system for your property must have advanced treatment, pressure dosing, or both as part of your repair system’s design. **[Note: modify this paragraph to fit the specific situation]** These requirements assure public health and groundwater supplies are protected and that the risk for human disease transmission is minimized.

Employees of the Virginia Department of Health (“VDH”) typically do not design sewage systems with advanced treatment 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 OSE/PE to assure that the owner’s needs are met. VDH does not have the resources to provide this extensive consultation and cannot choose specific products because of our regulatory relationship with product manufacturers.

Pursuant to Code of Virginia § 32.1-164.1:1.B, whenever an onsite sewage system is failing and it is on or serves real property consisting of not less than one and not more than four dwelling units, an owner may request a waiver from requirements for advanced treatment, pressure dosing, or both, as long as such a level of advanced treatment or pressure dosing was not required by the original permit and approval documents. Furthermore, the State Health Commissioner shall issue such a waiver if the request meets the statutory prerequisites, including

there being no finding by the Commissioner that the current system was installed illegally without a permit. Based upon the review of documents regarding your current onsite system, you are eligible for the waiver should you choose to apply for one.

If you choose to request a waiver, VDH staff will design your system at your request, as long as the requirements are relatively simple. If you do not obtain a waiver or decline to request that VDH design your system, you must hire a qualified consultant to design your repair or replacement system. Currently, VDH recognizes PEs (Professional Engineers licensed by the Virginia Department of Professional and Occupational Regulation) for any type of system design, and OSEs (Onsite Soil Evaluators licensed by the Virginia Department of Professional and Occupational Regulation) for certain system designs that do not require the practice of engineering. If you request a waiver and **do not** want VDH to design the repair system, please complete the enclosed Waiver Request and return it to this office with your OSE/PE plans for the repair or replacement system - **do not check the box requesting VDH to design your system**. If you request a waiver and prefer VDH to design your system, complete the waiver, check the design request box, and return it to our office (address noted on the letterhead). As soon as VDH receives this information, it will process your application and issue you a repair permit if the statutory requirements are met.

If you are signing the waiver agreement, have your signature notarized. This is a legal document so review it carefully. You may wish to seek legal advice from an attorney to explain the waiver and future consequences should you transfer the property to a new owner. The law requires you to record the waiver in the land records of the clerk of the circuit court in the jurisdiction in which the onsite sewage system is located. A repair waiver is only transferable in certain circumstances as identified under the Code of Virginia § 32.1-164.1:1.C.

Unless covered by an exception contain in Code of Virginia § 32.1-164.1:1.C, a waiver and the operating permit for your system are both null and void upon transfer or sale of the property on which the onsite sewage system is located. It is unlawful to operate an onsite sewage system without a valid operating permit (12VAC5-610-240). Unless transfer occurs pursuant to an exception in Code of Virginia § 32.1-164.1:1, a new owner will be unable to lawfully occupy the dwelling/structure and operate the sewage system until obtaining a new operating permit. Such new owner will need to apply for, and obtain, a new construction permit that complies with those parts of the Regulations to which you were previously granted a waiver (i.e. advanced treatment and/or pressure dosing) and any new requirements adopted after the waiver was granted. The operating permit for the system can only be reinstated after the required upgrades are completed. Pursuant to Code of Virginia § 32.1-164.1:1.D, you are required to deliver to the purchaser a written disclosure prior to the acceptance of a real estate purchase contract. The written disclosure statement shall be in a separate document, developed by the Real Estate Board. *These requirements apply to your system, even if it does not appear to be failing at the time of transfer.*

If you want an OSE/PE to design your system after requesting a waiver, please discuss with your consultant so he may submit plans incorporating your wishes. VDH will not change your expert's design and an OSE/PE must approve the system's final construction.

If you request a waiver and ask for VDH to design the new system, please remember that VDH lacks the resources to consider, inform, and consult with you about all design options available in the marketplace for a repair. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on your specific needs, please consider that VDH could design a system inconsistent with your immediate or long-term interests due to VDH's lack of resources and inability to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. VDH cannot recommend one product over another, just as VDH cannot design or recommend a specific proprietary pre-engineered system. VDH is unable to recommend certain products or proprietary designs because of VDH's unique position as a regulator and having scarce resources to provide you with detailed consultation. Consequently, it is possible VDH could not provide a design that is as well-tailored to your needs as compared to a private consultant. A private consultant would not necessarily have VDH's limitations, and could propose specific products and provide more in-depth consultation.

Also, VDH cannot advise you regarding how a system under a waiver may affect your ability to transfer the property given the restrictions on the transferability of a waiver. Additionally, VDH cannot advise you about liability issues should your system fail and adversely impact drinking water supplies. A system installed under a waiver may not comply with the Regulations regarding the level of treatment and/or pressure dosing requirements.

You will soon receive (or have already received) a letter from this office notifying you that the failure of your sewage system may constitute a violation of the Regulations. Please follow any directions contained in that letter and carefully heed any time limits for repairing your failing system. As I mentioned earlier in this letter, you are required to have an operating permit in order to use an onsite sewage system. I encourage you to complete the system repairs necessary to get a new operating permit as quickly as possible.

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

Attachment #5 – (Owner Request for Waiver and Waiver for Repairs)

REQUEST FOR WAIVER and WAIVER FOR A REPAIR PERMIT

This document, which includes a REQUEST FOR WAIVER AND WAIVER (collectively, “AGREEMENT”), is made and entered into this ____ Day of _____, 201_, by _____ <Insert Owner(s)>_____, and, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (hereinafter “DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS, OWNER owns ____<Insert Address/Tax Map number>_____ (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to repair the PROPERTY’S existing onsite sewage system; and

WHEREAS, the DEPARTMENT, in accordance with the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended July 1, 2000) (“SHDR”) and the *Alternative Onsite Sewage System Regulations* (12VAC5-613-10 et seq., effective December 7, 2011 (collectively, the “Regulations”), has determined that the onsite sewage system serving the PROPERTY is failing and must be repaired or replaced; and

WHEREAS, the DEPARTMENT determines that the REGULATIONS require additional treatment or pressure dosing in order to adequately protect public health and ground and surface water resources; and

WHEREAS, Code of Virginia § 32.1-164.1:1 provides that whenever any onsite sewage system is failing, and it is on or serves real property consisting of not less than one nor more than four dwelling units, and the Board's regulations impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly, or (ii) a new requirement for pressure dosing, the owner may request a waiver (hereinafter "WAIVER") from the requirements of the REGULATIONS pertaining to additional treatment and or pressure dosing for a repair system; and

WHEREAS, if the above stated requirements for an owner to request a waiver have been met, the State Health Commissioner (hereinafter, the "COMMISSIONER") shall grant such WAIVER, unless the COMMISSIONER finds that the existing sewage system was installed illegally without a permit; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, OWNER, by executing this AGREEMENT, hereby requests that the COMMISSIONER grant the WAIVER from additional treatment and/or pressure dosing requirements provided at Code of Virginia § 32.1-164.1:1.

NOW, THEREFORE, in exchange for the mutual promises contained herein, the OWNER and the COMMONWEALTH agree as follows: the WAIVER provided at Code of Virginia § 32.1-164.1:1 is hereby granted 24 hours after OWNER provides certification to the DEPARTMENT that this AGREEMENT has been recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located. Except as provided in Code of Virginia § 32.1-164.1:1.C, waivers granted hereunder shall not be transferable and shall be null and void upon transfer or sale of the

property on which the onsite sewage system is located. Additional treatment or pressure dosing requirements shall be imposed in such instances when the property is transferred or sold.

REQUEST FOR DEPARTMENT TO DESIGN A REPAIR SYSTEM

Check Here if this Section Applies.

OWNER hereby requests that an employee of the Virginia Department of Health design OWNER's sewage system. OWNER understands that the DEPARTMENT cannot serve as OWNER's consultant and that there are design choices that, depending upon OWNER's needs, may increase costs in the long run because of the requirement to upgrade OWNER's sewage system at the time the PROPERTY is transferred. If OWNER requests a waiver and asks the DEPARTMENT to design the new system, please remember that the DEPARTMENT lacks the resources to consider, inform, and consult with OWNER about all design options available in the marketplace for a repair. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on OWNER's specific needs, the DEPARTMENT could design a system inconsistent with OWNER's immediate or long-term interests due to the DEPARTMENT's lack of resources and inability to provide OWNER with complete consultation services. The DEPARTMENT regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. The DEPARTMENT cannot recommend one product over another, just as the DEPARTMENT cannot design or recommend a specific proprietary pre-engineered system. The DEPARTMENT is unable to recommend certain products or proprietary designs because of the DEPARTMENT's unique position as a regulator and having scarce resources to provide OWNER with detailed consultation. Consequently, it is possible the DEPARTMENT could not provide a design that is as well-tailored to OWNER's needs as compared to a private consultant. A private consultant would not necessarily have the DEPARTMENT's limitations, and could propose specific products and provide more in-depth consultation.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Attachment #6 - (Letter to Owner Regarding Voluntary Upgrade Application and Potential for Waiver)

Date

Owner Name
Address
City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] Health Department received your application for a sewage system voluntary upgrade permit which did not include supporting documentation from a licensed onsite soil evaluator (“OSE) or professional engineer (“PE”). Based on our site and soil evaluations (copy attached), the conditions on your lot may not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended July 1, 2000) (“SHDR”) for a Septic Tank Effluent (STE) system for the following reasons:

(Choose one or more or add as appropriate.)

1. Insufficient depth to a limiting factor such as the seasonal water table, a restrictive horizon, rock, etc.
2. Insufficient horizontal separation from well, shellfish waters, etc.
3. Insufficient area of suitable soil.

The voluntary upgrade system for your property must have advanced treatment, pressure dosing, or both as part your system’s design. **[Note: modify this paragraph to fit the specific situation]** These requirements assure public health and groundwater supplies are protected and that the risk for human disease transmission is minimized.

Employees of the Virginia Department of Health (VDH) typically do not design sewage systems with advanced treatment 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 OSE/PE to assure that the owner’s needs are met. VDH does not have the resources to provide this extensive consultation and cannot choose specific products because of our regulatory relationship with product manufacturers.

Pursuant to Code of Virginia § 32.1-164.1:1.B, whenever an owner has elected to voluntarily upgrade an onsite sewage system pursuant to § 32.1-164.1:3 and it is on or serves real property consisting of not less than one and not more than four dwelling units, an owner may request a

waiver from requirements for advanced treatment, pressure dosing, or both, as long as such a level of advanced treatment or pressure dosing was not required by the original permit and approval documents. Furthermore, the State Health Commissioner shall issue such a waiver if the request meets the statutory prerequisites, including there being no finding by the Commissioner that the current system was installed illegally without a permit. Based upon the review of documents regarding your current onsite system, you are eligible for the waiver should you choose to apply for one.

If you choose to request a waiver, VDH staff will design your system at your request, as long as the requirements are relatively simple. If you do not obtain a waiver or decline to request that VDH design your system, you must hire a qualified consultant to design your voluntarily upgraded system. Currently, VDH recognizes PEs (Professional Engineers licensed by the Virginia Department of Professional and Occupational Regulation) for any type of system design, and OSEs (Onsite Soil Evaluators licensed by the Virginia Department of Professional and Occupational Regulation) for certain system designs that do not require the practice of engineering. If you request a waiver and **do not** want VDH to design the upgrade system, please complete the enclosed Waiver Request and return it to this office with your OSE/PE plans for the upgraded system - **do not check the box requesting VDH to design your system**. If you request a waiver and prefer VDH to design your system, complete the waiver, check the design request box, and return it to our office (address noted on the letterhead). As soon as we receive this information, we will process your application and issue you a voluntary upgrade permit.

If you are signing the waiver agreement, have your signature notarized. This is a legal document so review it carefully. You may wish to seek legal advice from an attorney to explain the Waiver. The law requires you record the waiver in the land records of the clerk of the circuit court in the jurisdiction in which the onsite sewage system is located. A voluntary upgrade waiver is transferable pursuant to a real estate purchase contract.

You are required by law to disclose the Waiver in writing to any and all potential purchasers or mortgage holders pursuant to Code of Virginia § 32.1-164.1:1.D.

If you want an OSE/PE to design your system after requesting a waiver, please discuss with your consultant so he may submit plans incorporating your wishes. VDH will not change your expert's design and an OSE/PE must approve the system's final construction.

If you request a waiver and ask for a VDH design, please remember VDH lacks the resources to consider, inform, and consult with you about all design options available in the marketplace for a voluntary upgrade. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on your specific needs, please consider that VDH could design a system inconsistent with your immediate or long-term interests due to VDH's lack of resources and inability to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. VDH cannot recommend one product over another, just as VDH cannot design or recommend a specific proprietary pre-engineered system. VDH is unable to recommend certain products or proprietary designs because of VDH's unique position as a

regulator and having scarce resources to provide you with detailed consultation. Consequently, it is possible VDH could not provide a design that is as well-tailored to your needs as compared to a private consultant. A private consultant would not necessarily have VDH's limitations, and could propose specific products and provide more in-depth consultation.

Also, VDH cannot advise you regarding how a system under a waiver may affect your ability to transfer the property; nor can VDH advise you about liability issues should your system fail and adversely impact drinking water supplies. A system installed under a waiver may not comply with the Regulations regarding the level of treatment and/or pressure dosing requirements.

You have the right to challenge the results of VDH's site and soil evaluations and the decisions made regarding your voluntary upgrade application (see the first and second paragraphs of this letter) by requesting an informal fact-finding conference (IFFC). Your written request for an IFFC must be received in this office within 30 days from receipt of this letter. Please call me at (____) ____ - ____ if you have more questions.

Sincerely,

EHSS

Attachment #7 – (Owner Request for Waiver and Waiver for Voluntary Upgrades)

REQUEST FOR WAIVER and WAIVER FOR A VOLUNTARY UPGRADE

This document, which includes a REQUEST FOR WAIVER AND WAIVER (collectively, “AGREEMENT”), is made and entered into this ____ Day of _____, 201_, by _____ <Insert Owner(s)> _____, and, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (hereinafter “DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS, OWNER owns ____<Insert Address/Tax Map number>_____ (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to voluntarily upgrade the PROPERTY’S existing onsite sewage system; and

WHEREAS, the DEPARTMENT determined that the *Sewage Handling and Disposal Regulations* (12VAC5-610-10 et seq., as amended July 1, 2000) (“SHDR”) and the *Alternative Onsite Sewage System Regulations* (12VAC5-613-10 et seq., effective December 7, 2011 (collectively, the “Regulations”), require additional treatment or pressure dosing that was not provided by the voluntary upgrade requested by OWNER; and

WHEREAS, the voluntary upgrade must provide additional treatment to comply with the REGULATIONS and adequately protect public health and water resources; and

WHEREAS, Code of Virginia § 32.1-164.1:1 provides that whenever an owner has elected to voluntarily upgrade an onsite sewage system pursuant to Code of Virginia § 32.1-164.1:3, the system is on or serves real property consisting of not less than one nor more than four dwelling units, and the REGULATIONS impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly, or (ii) a new requirement for pressure dosing, then the owner may request a waiver (hereinafter “WAIVER”) from the requirements of the REGULATIONS pertaining to additional treatment and/or pressure dosing for the proposed upgraded system; and

WHEREAS, if the above stated requirements for an owner to request a waiver have been met, the State Health Commissioner (hereinafter “COMMISSIONER”) shall grant such WAIVER, unless the COMMISSIONER finds that the existing sewage system was installed illegally without a permit; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, OWNER, by executing this AGREEMENT, hereby requests that the COMMISSIONER grant the WAIVER from additional treatment and/or pressure dosing requirements provided at Code of Virginia § 32.1-164.1:1.

NOW, THEREFORE, in exchange for the mutual promises contained herein, the OWNER and the COMMONWEALTH agree as follows: the WAIVER provided at Code of Virginia § 32.1-164.1:1 is hereby granted 24 hours after OWNER provides certification to the DEPARTMENT that this AGREEMENT has been 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.

REQUEST FOR DEPARTMENT TO DESIGN A VOLUNTARY UPGRADE SYSTEM

- Check Here if this Section Applies.

OWNER hereby requests that an employee of the Virginia Department of Health design OWNER's sewage system. OWNER understands that the DEPARTMENT cannot serve as OWNER's consultant. If OWNER requests a waiver and asks the DEPARTMENT to design the new system, please remember that the DEPARTMENT lacks the resources to consider, inform, and consult with OWNER about all design options available in the marketplace for a voluntary upgrade. Hundreds of design options and potentially hundreds of products exist from which to choose within each possible design. Depending on OWNER's specific needs, the DEPARTMENT could design a system inconsistent with OWNER's immediate or long-term interests due to the DEPARTMENT's lack of resources and inability to provide OWNER with complete consultation services. The DEPARTMENT regulates the onsite sewage industry and approves (or denies) requests from product manufacturers. The DEPARTMENT cannot recommend one product over another, just as the DEPARTMENT cannot design or recommend a specific proprietary pre-engineered system. The DEPARTMENT is unable to recommend certain products or proprietary designs because of the DEPARTMENT's unique position as a regulator and having scarce resources to provide OWNER with detailed consultation. Consequently, it is possible the DEPARTMENT could not provide a design that is as well-tailored to OWNER's needs as compared to a private consultant. A private consultant would not necessarily have the DEPARTMENT's limitations, and could propose specific products and provide more in-depth consultation.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Attachment #8A – (Hold Harmless Agreement for Voluntary Upgrades with Waivers)

**VOLUNTARY UPGRADE
RELEASE, HOLD HARMLESS,
AND INDEMNIFICATION AGREEMENT**

This AGREEMENT is made and entered into this ____ Day of _____, 20__, by and between _____ and _____, including, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (“DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS OWNER owns _____ <Insert Property Description> _____, Virginia (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to voluntarily upgrade the existing onsite sewage system serving PROPERTY; and

WHEREAS, the DEPARTMENT determined that the *Sewage Handling and Disposal Regulations* (12VAC5-610) and the *Alternative Onsite Sewage Systems Regulations* (12VAC5-613) (collectively, the “REGULATIONS”), require additional treatment and/or pressure dosing not provided by the voluntary upgrade requested by OWNER; and

WHEREAS, the voluntary upgrade must provide additional treatment and/or pressure dosing to comply with the REGULATIONS and adequately protect public health and water resources; and

WHEREAS, Code of Virginia § 32.1-164.1:1 provides that whenever an owner has elected, pursuant to Code of Virginia § 32.1-164.1:3, to voluntarily upgrade an onsite sewage system that is on or serves real property consisting of not less than one nor more than four dwelling units, and the REGULATIONS impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly, or (ii) a new requirement for pressure dosing, then the owner may request a waiver (hereinafter “WAIVER”) from the requirements of the REGULATIONS pertaining to additional treatment and/or pressure dosing; and

WHEREAS, the State Health Commissioner (“COMMISSIONER”) shall grant such WAIVER, unless the COMMISSIONER finds that the existing system was installed illegally without a permit; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, pursuant to Code of Virginia § 32.1-164.1:1, OWNER requested and received the WAIVER from additional treatment requirements and/or pressure dosing; and

WHEREAS, Code of Virginia § 32.1-164.1:3 allows the DEPARTMENT to require OWNER to indemnify and hold harmless the DEPARTMENT before issuing the construction permit.

NOW, THEREFORE, OWNER agrees to and hereby does release the DEPARTMENT from any and all claims, complaints, demands, actions, causes of action, liabilities, and obligations, whether administrative, legal or equitable, whether known or unknown, which OWNER now has or may have in the future relating to or arising from the voluntary upgrade, including, without limitation, any and all claims due to the failure of any person to

comply with federal, state, or local laws or regulations, claims under the Virginia Tort Claims Act, the Virginia Constitution, the United States Constitution and amendments thereto, or under common law. Furthermore, OWNER expressly releases the DEPARTMENT from any and all claims, actions, causes of action, or obligations under the Virginia Onsite Sewage Indemnification Fund, § 32.1-164.1:01 of the *Code of Virginia*, that may arise from or be related to the repair, replacement, and/or operation of OWNER's onsite sewage disposal system pursuant to the voluntary upgrade, if installed.

OWNER also agrees to hold harmless and indemnify the DEPARTMENT for any sum of money or judgment against the DEPARTMENT, including reasonable attorneys' fees incurred in the defense of any action arising out of or related to the voluntary upgrade specified in the permit and not required by law.

Severability. If any portion of this AGREEMENT is held to be void or deemed unenforceable for any reason, the remaining portion shall survive and remain in effect, unless the effect of such severance shall defeat the parties' intent as set forth herein, with the parties asking the Court to construe the remaining portions consistent with the expressed intent of the parties.

Entire Agreement. OWNER acknowledges that OWNER has had an opportunity to consult with an attorney concerning OWNER's rights and obligations. OWNER acknowledges that OWNER has had sufficient time and opportunity to consider this AGREEMENT with the DEPARTMENT, that OWNER has read this AGREEMENT, that OWNER fully understands and agrees to its terms and conditions, and that there exists no other promises, representations, inducements or agreements related to this AGREEMENT, except as specifically set forth herein. Furthermore, OWNER acknowledges that this constitutes the entire agreement between OWNER and the DEPARTMENT.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Attachment #8B – (Hold Harmless Agreement for Voluntary Upgrades Without Waivers)

**VOLUNTARY UPGRADE
RELEASE, HOLD HARMLESS,
AND INDEMNIFICATION AGREEMENT**

This AGREEMENT is made and entered into this ____ Day of _____, 20__, by and between _____ and _____, including, without limitation, their heirs, successors, devisees, agents, assigns, representatives and interests (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (“DEPARTMENT”), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents (hereinafter “COMMONWEALTH”).

WHEREAS OWNER owns _____ <Insert Property Description> _____, Virginia (hereinafter “PROPERTY”); and

WHEREAS, OWNER requested a construction permit to voluntarily upgrade the existing onsite sewage system serving PROPERTY; and

WHEREAS, OWNER affirms, and the COMMISSIONER has not found to the contrary, that the existing sewage system was installed legally with a valid permit; and

WHEREAS, Code of Virginia § 32.1-164.1:3 allows the DEPARTMENT to require OWNER to indemnify and hold harmless the DEPARTMENT before issuing the construction permit.

NOW, THEREFORE, OWNER agrees to and hereby does release the DEPARTMENT from any and all claims, complaints, demands, actions, causes of action, liabilities, and obligations, whether administrative, legal or equitable, whether known or unknown, which

OWNER now has or may have in the future relating to or arising from the voluntary upgrade, including, without limitation, any and all claims due to the failure of any person to comply with federal, state, or local laws or regulations, claims under the Virginia Tort Claims Act, the Virginia Constitution, the United States Constitution and amendments thereto, or under common law. Furthermore, OWNER expressly releases the DEPARTMENT from any and all claims, actions, causes of action, or obligations under the Virginia Onsite Sewage Indemnification Fund, § 32.1-164.1:01 of the *Code of Virginia*, that may arise from or be related to the repair, replacement, and/or operation of OWNER's onsite sewage disposal system pursuant to the voluntary upgrade, if installed.

OWNER also agrees to hold harmless and indemnify the DEPARTMENT for any sum of money or judgment against the DEPARTMENT, including reasonable attorneys' fees incurred in the defense of any action arising out of or related to the voluntary upgrade specified in the permit and not required by law.

Severability. If any portion of this AGREEMENT is held to be void or deemed unenforceable for any reason, the remaining portion shall survive and remain in effect, unless the effect of such severance shall defeat the parties' intent as set forth herein, with the parties asking the Court to construe the remaining portions consistent with the expressed intent of the parties.

Entire Agreement. OWNER acknowledges that OWNER has had an opportunity to consult with an attorney concerning OWNER's rights and obligations. OWNER acknowledges that OWNER has had sufficient time and opportunity to consider this AGREEMENT with the DEPARTMENT, that OWNER has read this AGREEMENT, that OWNER fully understands and agrees to its terms and conditions, and that there exists no other promises, representations, inducements or agreements related to this AGREEMENT, except as specifically set forth herein. Furthermore, OWNER

acknowledges that this constitutes the entire agreement between OWNER and the DEPARTMENT.

Environmental Health Manager

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Understood and Accepted

OWNER

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____

On this the _____ day of _____, 201_

_____ appeared before
me. _____ affirm that they have the authority to enter into this
AGREEMENT and that the signatures thereto are their own.

Notary Public _____

ID# _____

My Commission expires:

Attachment #9 - (Informational Letter to Owner with Repair Waiver Issued July 1, 2004 through December 6, 2011, Regarding Option to Voluntarily Upgrade the System)

[Date]

[Name]

[Address]

[City, State, Zip]

Dear [Name]

Our records indicate that you have a septic system located at [specific address] for which a repair waiver was applied for and received during the period of July 1, 2004 to December 6, 2011. Due to recently passed legislation, you may be eligible for a voluntary upgrade waiver to this septic system.

During the 2015 legislative session, the Virginia General Assembly passed House Bill 1804 (HB 1804), which amended Code of Virginia § 32.1-164.1:1.B. The amended statute provides that a property owner who obtained a waiver to repair a failing onsite sewage system between the dates specified above and completed such a repair, and wishes to voluntarily upgrade the same septic system may request, and shall receive, a voluntary upgrade waiver. HB 1804 can be found in its entirety at the following link: <http://leg1.state.va.us/cgi-bin/legp504.exe?151+ful+HB1804ER+pdf>

Should you have any questions about HB 1804, your eligibility or the process for receiving a voluntary upgrade waiver, please contact _____ Health Department at _____.

Sincerely,

EHSS

Attachment #10 – (Document to Void a Recorded Waiver)

Date, 2017

Owner
ADDRESS

RE: **Waiver Null and Void**
Address: _____
Tax Map: _____

Dear Owner:

On ____, 2017, the _____ Health Department (DEPARTMENT) determined that, under the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20 *et seq*, the REGULATIONS), the onsite sewage system serving the parcel referenced above (PARCEL) was failing and required repair or replacement.

On _____, 2017, the DEPARTMENT determined that, under the REGULATIONS, the repair or replacement system located within the PARCEL must provide Secondary Effluent and/or Pressure Dosing.

On _____, 2017, as owner of the PARCEL, you executed a legal document, which included a REQUEST FOR WAIVER, a RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT, and a WAIVER (collectively, "WAIVER") in which the State Health Commissioner waived the requirements for Secondary Effluent and Pressure Dosing pursuant to § 32.1-164.1:1.B. of the *Code of Virginia*. The WAIVER stipulated that it was non-transferable and that it was null and void upon transfer or sale of the property on which the onsite sewage system is located.

This WAIVER was recorded in the land records of the _____ Circuit Court on date. The WAIVER was indexed in Deed Book **xx**, Page **xx**.

On _____, 201_, <<Insert details about why waiver is being voided>>.

NOW, THEREFORE, in consideration of the facts contained herein, the WAIVER recorded and indexed on **date** is NULL AND VOID in its entirety. This document may be recorded in the land records of the Circuit Court having jurisdiction over the PARCEL.

Health Director
_____ Health District

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____.

On this the _____ day of _____, 2017, appeared before me

_____ and _____ who affirmed that he/they have the authority to enter into this AGREEMENT and that the signatures thereto are their own.

Notary Public

My Commission expires: