



# COMMONWEALTH of VIRGINIA

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

TDD 1-800-828-1120

July 1, 2007

## MEMORANDUM

**TO:** District Health Directors  
Environmental Health Managers  
Environmental Health Specialists  
GMP#123.A

**FROM:** Robert B. Stroube, M.D., M.P.H.  
State Health Commissioner

**SUBJECT:** Processing Requests for Assistance from the *Onsite Sewage Indemnification Fund*  
(§ 32.1-164.1:01 of the *Code of Virginia*)

### BACKGROUND:

In 1994, the General Assembly created the Onsite Sewage Indemnification Fund (the Fund) §32.1-164.1:01 of the Code of Virginia, for the purpose of assisting any Virginia real property owner holding a valid septic tank or other onsite sewage system permit when the system fails within three years of its construction due to the negligence of the Virginia Department of Health (the Department). During its 2007 session, the General Assembly passed House Bills 1949 and 2692, amending the Fund. Governor Kaine approved the amendments and they became effective on July 1, 2007. As amended, the Fund has the same purpose, but explicitly states that it is to be used to reimburse the owner for the reasonable cost of following the Board of Health's regulations to repair or replace the onsite sewage system or components thereof that failed. The total amount an owner may receive in payment from the Fund shall not exceed \$30,000 and the owner is required to repair or replace the system prior to receiving payment.

The amended code states that "the Board may promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the administration of the Fund consistent with this chapter." Until the Board of Health adopts such regulations, this policy will govern the procedures for submitting, accepting, investigating, processing, and approving or denying requests for assistance from the Fund. This policy replaces GMP#123, which is hereby rescinded. See Appendix A for a copy of § 32.1-164.1:01.

### PURPOSE OF THE POLICY:

1. To provide notice of the *Fund*.

2. To establish an application procedure and guidelines for Virginia real property owners to use to apply for assistance from the *Fund*.
3. To establish the procedure for investigating and processing requests for assistance from the *Fund*.
4. To provide examples of how the Department and Commissioner investigate and process requests for assistance from the *Fund*.

#### **DEFINITIONS AND EXPLANATIONS OF PHRASES IN THE CODE:**

- A. “Sewage system failure” means that raw or partially treated sewage is present on the ground’s surface, in adjacent ditches or waterways, or exposed to insects, animals or humans. Pollution of the groundwater or backup of sewage into plumbing fixtures may also indicate system failure. See Section 350 of the *Sewage Handling and Disposal Regulations* (the *Regulations*). Sewage systems fail for many reasons, including improper siting or design, malfunctioning equipment or components, poor maintenance, careless or improper operation, or operator error. Failing systems always require immediate corrective action to restore normal operation. Gurgling, bubbling, and slow draining toilets do not constitute a failed sewage system as defined by Section 350 of the *Regulations*; however, such observations do require an investigation to determine whether they are a symptom of a plumbing issue or an impending sewage system problem.
- B. “Sewage system component failure” means that a part or discreet element of the sewage system is not operating in a normal or usual manner, which when corrected, repaired, or replaced, will return the system to normal function. A component failure could be detected if testing indicates that the influent or effluent quality does not meet a prescribed standard (*i.e.*, secondary effluent), that raw or partially treated sewage is exposed on the ground’s surface on a continual or intermittent basis, or that improper operation of a system component exists, such as a pump failure or pipe break.
- C. “Holding a valid permit to operate an onsite sewage system” means that the owner received an operation permit for the system that failed. The *Regulations* require an owner to obtain a permit from the Department before constructing or repairing a sewage system (See Section 280 of the *Regulations*). After the system has been installed, the sewage system must be inspected and the contractor who installed the system must sign a statement saying the construction was completed in accordance with the construction permit (See Sections 320-330 of the *Regulations*). Upon satisfaction of these requirements, the Department issues an operation permit, which constitutes a valid permit to operate an onsite sewage system (See Section 340 of the *Regulations*).
- D. “An onsite sewage system that has been permitted by the Department of Health” means that the Department issued an operation permit after the system was constructed and inspected in accordance with the *Regulations*.
- E. “Specific actions of the Department were negligent and that those actions caused the failure” means that: (1) the Department had a duty to perform, (2) the Department breached (failed to

perform) the duty, (3) the breach of duty or failure to perform the duty caused the actual damage or injury, and (4) that the owner incurred damage or injury.

In considering the issue of causation when evaluating an application, the State Health Commissioner will examine whether the Department had a duty to perform; and, if it did, determine whether the failure to perform that duty caused the system or components thereof to fail. For example, a construction permit might require a contractor to install the drainfield 24 inches below the ground surface. Instead, the contractor installs the drainfield 36 inches below the ground surface. Despite the error, the Department inspects the system and issues an operation permit. After the system is put in use, it fails (sewage is visible on the ground surface). After investigating, the Department discovers that the soil 40 inches below the ground surface is restrictive. The system failed because it was too close to a restrictive layer and the soil could not absorb effluent at the rate it was introduced by the owner. In this case, the system failed because the contractor installed the system too deep (faulty construction). The fact that the Department inspected the system's construction and issued an operation permit did not cause the system to fail because it would not have mattered whether the Department performed the inspection.

With respect to damages, if someone other than the owner pays to repair or replace it at no expense to the owner (possibly because of a contractual obligation or warranty), then the owner who holds the valid permit to operate the system, the owner does not suffer damage or injury that is covered by the *Fund* (the reasonable cost to repair or replace the system that failed).

#### **HOW TO FILE A REQUEST FOR ASSISTANCE FROM THE *FUND*:**

The owner of an onsite sewage system, which has been permitted by the Department, may cause the Commissioner to review the circumstances of the onsite sewage system failure if the onsite sewage system failed within three years of its construction date. To cause the review, the owner must complete an application (see Appendix B) within one year from the date the system or components thereof failed and mail it to the Commissioner of Health, care of the Division of Onsite Sewage and Water Services (DOSWS), 109 Governor Street, 5<sup>th</sup> Floor, Room 538, Richmond, Virginia 23219. The law specifies that the owner is required to mail the request for assistance from the *Fund* via the United States Postal Service by certified mail, return receipt requested.

A complete application will contain the following information:

1. The owner's name, address, and Tax ID or other identifying information for the property;
2. Contact information for the owner;
3. Answers to questions 1 through 8 on the application;
4. Answer to question 14 for owners whose adjusted gross income is equal to or greater than 250 percent of the federal poverty guidelines<sup>1</sup>; and

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<sup>1</sup> Each year, the federal government releases an official income level for poverty called the Federal Poverty Income Guidelines, and is often informally referred to as the "Federal Poverty Level". The benefit levels of many low-income assistance programs are based on these poverty guidelines. For 2007, refer to the Federal Register Vol. 72, No. 15, January 24, 2007, pp. 3147-3148. Visit <http://aspe.hhs.gov/poverty/> for additional information. See Income Level G, Department

5. The owner's signature.

Answers to questions 9 through 13, and 15 through 16 of the application will allow the Department to investigate the request for assistance in a timely manner, but are not required to be answered if the owner does not have the specific information requested. If costs are not known for the failed system (Question 13), the owner can submit estimates to substantiate what it likely would have cost. An owner may consult with a soil scientist, Authorized Onsite Soil Evaluator and/or Professional Engineer, septic contractor, their builder, or other expert to support their application or to learn more about the potential causes of failure and the actions required to repair or replace the system.

If the Health Commissioner determines that an owner qualifies for assistance from the *Fund*, the Department requires the following actions and information before it can make a payment:

1. The owner must submit an application to repair the sewage system or components thereof to the Department. The local health department in the city, county or town where the property is located (the "local health department") receives the application, inspects the site, issues the construction or repair permit, and issues the operation permit.
2. The owner must receive a repair permit from the local health department.
3. The owner must complete the requirements in the repair permit and receive an operation permit for the system.
4. The owner must keep a copy of all canceled checks, bills of sale, invoices, and receipts for (a) the failed system (estimated costs can be considered when costs are not known); (b) the repairs made to the failed system; and if applicable, (c) the new system that replaced the failed system. The owner must submit documentation to the Department to demonstrate the actual cost to repair or replace the system.

If the owner submits an incomplete application, the Commissioner will return it to the owner. Only timely and complete applications shall be considered. If an owner claims that he cannot afford to install the repair system or components thereof, then the Commissioner may consider an application before the repair or replacement is completed, subject to the following conditions:

1. The owner has submitted adequate documentation to substantiate that he does not have the financial resources to install the repair or components thereof. The owner may complete an appropriate form to document his income level and/or submit a bank loan denial letter from a bank loan officer where the owner transacts business or where the mortgage to the property resides. Owners whose adjusted gross income is below 250 percent of the federal poverty guidelines as published each year shall be granted approval. Owners whose adjusted gross income is 250 percent or more than the federal poverty guidelines may submit a statement from a bank loan officer from the owner's financial institution indicating that the bank refuses to loan money to repair the sewage system or components thereof. See Footnote #1.

2. The owner has submitted three estimates to install the repair system or components thereof from qualified and properly licensed sewage system installers. If the Commissioner determines that an owner is eligible to receive payment from the *Fund* based on estimated costs, then monies shall be distributed in two disbursements through the release and hold harmless agreement. The Commissioner will only pay up to, but not more than the lowest estimate. Owners are encouraged to only seek estimates from those contractors with whom they would be willing to hire. The first payment will pay no more than one-half of the total amount of the lowest estimate. A second and final payment will be made up to, but not more than the lowest estimate after the owner receives an operation permit for the repair system.

If the owner was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 of the *Code of Virginia* shall apply. In any action contesting the filing of the request for payment from the fund, the burden of proof shall be on the owner to establish mailing and receipt of the notice in conformity with this section. The signed receipt indicating delivery to the Commissioner, when admitted into evidence, shall be prima facie evidence of filing of the request for payment from the *Fund* under this section. The request for payment from the fund shall be deemed to be timely filed if it is sent by certified mail, return receipt requested, and if the official receipt shows that the mailing was within the prescribed time limits.

#### **EVALUATION OF REQUESTS FOR ASSISTANCE:**

The date of system failure is the date that an owner submits an application for repair to the local health department; or, the date that a local health department sends a notice to the owner which acknowledges that an apparent failure existed, whichever occurs first.

When systems fail, the Department expects that the process of identifying a problem, seeking assistance, and ultimately correcting it will result in the creation of records: (1) the owner contacts the local health department and submits a repair application; (2) a sewage handler pumps the septic tank and bills the owner for services; (3) the owner writes a letter to the builder or developer; or (4) a plumber, the system's installer, or other professional bills the owner for services; and, (5) the Department inspects the system and notifies the owner of its observations and expectations for compliance with the *Regulations*. Documentation from the Department, individuals or companies that operate and maintain sewage systems, or installers, contractors and builders that is created at or around the time of failure can be a fair, objective, and consistent measure for determining the date of sewage system failure. Absent Department records (repair permit application, notice), the other documentation mentioned above may be considered in determining the date of system failure where the application for repair or the notice occurred after three years from the system's construction date. Verbal and written statements, affidavits, and other information that are created after-the-fact will not be used to determine the date of system failure.

Installing or modifying a sewage system without valid a construction or repair permit automatically voids any application for assistance from the *Fund*. Any owner who did not possess a valid operation permit (issued pursuant to Section 340 of the *Regulations*) for the sewage system and operated it without a valid permit shall not be entitled to assistance from the *Fund*.

When an owner submits a complete application, the DOSWS will review it and any supporting information provided, the Department's entire record; and, if necessary, perform additional site and soil evaluation, a sanitary survey, or other such inspection or investigation as necessary. DOSWS may convene an informal fact-finding conference (IFFC). The IFFC shall follow the procedures outlined in Section 200.A of the *Regulations*. DOSWS shall periodically and routinely schedule meetings to review claims and provide a recommendation to the Commissioner regarding each request for assistance.

Upon the Commissioner's finding that the onsite sewage system was permitted by the Department and (i) the system or components thereof failed within three years of construction; (ii) that specific actions of the Department were negligent and that those actions caused the failure; and, (iii) that the owner filed a request for payment from the *Fund* within one year from the date the system or components thereof failed, the Commissioner shall, subject to the limitations stated herein, reimburse the owner for the reasonable cost of following the Board's regulations to repair or replace the failed onsite sewage system or components thereof. The total amount an owner may receive in payment from the *Fund* shall not exceed \$30,000. Only the costs of the system that failed or the costs of labor and equipment required to repair or replace the failed onsite sewage system or components thereof are reimbursable by the *Fund*.

An owner cannot be reimbursed for both the cost of the failed system and the cost for repairs or components thereof. If the costs to repair the system or components thereof are less than the cost of the failed system, then only the costs to repair the system or components thereof can be reimbursed. If the cost to repair the system or components thereof exceeds the cost of the failed system, only those costs that are directly attributed to labor (which includes design) and equipment (which includes materials) can be reimbursed. The *Fund* does not reimburse owners for consequential damages that are not directly related to the installation of the failed sewage system, the repair or components thereof. Examples of consequential damages include, but are not limited to the following: water damage; irrigation systems; tree removal and lost trees; inflation or lost wages; driveway or pavement repair; grading, seeding or shrubbery; meals and lodging; system operation and maintenance; electrical power to use the system; legal fees; and travel expenses.

If the Commissioner refuses a request for payment from the *Fund*, then the owner may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board ("Appeal Review Board", see §32.1-166.1 of the *Code of Virginia*). The owner may challenge any adverse decision of the Appeal Review Board to circuit court holding jurisdiction.

If the Commissioner finds that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from faulty construction or other private party error (the Department's negligence, if any, did not cause the system to fail), then the Commissioner may assist the owner of the failed system in seeking redress from the system's builder or other private party. In issuing a permit pursuant to §32.1-163.5 of the *Code of Virginia* and the *Regulations*, the Virginia Department of Health does not assume liability for actions and decisions made by private parties such as builders, developers, Authorized Onsite Soil Evaluators, Professional Engineers, or septic contractors.

**PAYMENT TO QUALIFIED OWNERS:**

Prior to receiving payment from the *Fund*, the owner shall follow the requirements in the Board's regulations to repair or replace the failed onsite sewage system or components thereof. Any payment from the *Fund* shall be conditioned upon (i) the execution by the owner of a release approved by the Attorney General of all claims against the Commonwealth, its political subdivisions, agencies, and instrumentalities and against any officer or employee of the Commonwealth in connection with or arising out of the occurrence complained of; and, (ii) the receipt of the owner's social security number. See Appendix C for an example of the required release.

If an owner pursues two or more simultaneous methods of remedy, then the Department reserves its right to discontinue processing the claim.

**ASSESSMENT OF CLAIMS:**

The Commissioner shall, at the end of each fiscal year, certify that no expenses were paid from the *Fund* to support the program for training and recognition of authorized onsite soil evaluators in lieu of payment to any owner or owners qualified to receive payment from the *Fund*. In the event the *Fund* is insufficient to meet requests for payment, the creation of the *Fund* shall not be construed to provide liability on the part of the Department or any of its personnel where no such liability existed prior to July 1, 1994.

The provisions of § 32.1-164.1:01 of the Code of Virginia shall apply to all requests for payment from the *Fund* beginning with those before the Commissioner on July 1, 2007. Owners with requests for payment from the *Fund* before the Commissioner on or after July 1, 2007, shall repair or replace the onsite sewage system or components thereof before receiving reimbursement from the *Fund*. The Commissioner and the Attorney General shall cooperatively assure that an actuarially sound program and policy for identifying, evaluating, and processing requests for payment from the *Fund* exists. This policy or regulation may be periodically changed to assure that an actuarially sound program exists.

Appendix A:

**VIRGINIA ACTS OF ASSEMBLY – CHAPTER**

*An Act to amend and reenact § [32.1-164.1:01](#) of the Code of Virginia, relating to the Onsite Sewage Indemnification Fund.*

Be it enacted by the General Assembly of Virginia:

1. That § [32.1-164.1:01](#) of the Code of Virginia is amended and reenacted as follows:

§ [32.1-164.1:01](#). Onsite Sewage Indemnification Fund.

A. There is hereby created the Onsite Sewage Indemnification fund whose purpose is to receive moneys generated by a portion of the fees collected by the Department of Health pursuant to subsections C and E of § [32.1-164](#) and appropriated by the Commonwealth for the purpose of assisting any Virginia real property owner holding a valid permit to operate an onsite sewage system when such system or components thereof fail within three years of construction and such failure results from the negligence of the Department of Health. The fund may also be used, in the discretion of the Board, to support the program for training and recognition of authorized onsite soil evaluators.

B. Ten dollars of each fee collected by the Department of Health pursuant to subsections C and E of § [32.1-164](#) shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department of Health by the General Assembly as it deems necessary.

C. The owner of an onsite sewage system that has been permitted by the Department of Health may cause, by filing a request for payment from the fund within one year from the date the system or components thereof failed-the Commissioner to review the circumstances of the onsite sewage system failure, if the onsite sewage system has failed within three years of construction. Upon the Commissioner's finding that the onsite sewage system was permitted by the Department and (i) the system or components thereof failed within three years of construction; (ii) that specific actions of the Department were negligent and that those actions caused the failure; and (iii) that the owner filed a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner shall, subject to the limitations stated herein, reimburse the owner for the reasonable cost of following the Board's regulations to repair or replace the failed onsite sewage system or components thereof.

D. Prior to receiving payment from the fund, the owner shall follow the requirements in the Board's regulations to repair or replace the failed onsite sewage system or components thereof.

E. The total amount an owner may receive in payment from the fund shall not exceed \$30,000. Only the costs of the system that failed or the costs of labor and equipment required to repair or replace the failed onsite sewage system or components thereof are reimbursable by the fund.

F. If the Commissioner finds that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from faulty construction or other private party error, the Commissioner may assist the owner of the failed system in seeking redress from the system's builder or other private party.



G. Every request for payment from the fund shall be forever barred unless the owner has filed a complete application as required by the Department. The request shall be filed with the Commissioner within one year from the date that the onsite sewage system or components thereof first failed. However, if the owner was under a disability at the time the cause of action accrued, the tolling provisions of § [8.01-229](#) shall apply. The owner shall mail the request for payment from the fund via the United States Postal Service by certified mail, return receipt requested, addressed to the Commissioner.

In any action contesting the filing of the request for payment from the fund, the burden of proof shall be on the owner to establish mailing and receipt of the notice in conformity with this section. The signed receipt indicating delivery to the Commissioner, when admitted into evidence, shall be prima facie evidence of filing of the request for payment from the fund under this section. The request for payment from the fund shall be deemed to be timely filed if it is sent by certified mail, return receipt requested, and if the official receipt shows that the mailing was within the prescribed time limits.

Notwithstanding any provision of this article, the liability for any payment from the fund shall be conditioned upon the execution by the owner of a release approved by the Attorney General of all claims against the Commonwealth, its political subdivisions, agencies, and instrumentalities and against any officer or employee of the Commonwealth in connection with or arising out of the occurrence complained of.

H. The Commissioner and the Attorney General shall cooperatively develop an actuarially sound program and policy for identifying, evaluating, and processing requests for payment from the fund.

I. If the Commissioner refuses the request for payment from the fund, the owner may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board.

The Board may promulgate regulations pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.) for the administration of the fund consistent with this chapter.

2. That the Commissioner shall, at the end of each fiscal year, certify that no expenses were paid from the fund to support the program for training and recognition of authorized onsite soil evaluators in lieu of payment to any owner or owners qualified to receive payment from the fund pursuant to this chapter.

Appendix B



COMMONWEALTH of VIRGINIA

Department of Health

P O BOX 2448

RICHMOND, VA 23218

TDD 1-800-828-1120

Application for Indemnification

Mail this completed application by certified mail or other appropriate tracking method, to the Commissioner of Health, care of the Division of Onsite Sewage and Water Services, 109 Governor Street, 5th Floor, Room 538, Richmond, Virginia 23219.

Owner(s): \_\_\_\_\_ Email: \_\_\_\_\_

Present Address: \_\_\_\_\_ Phone: (home) \_\_\_\_\_
(work) \_\_\_\_\_
(cell) \_\_\_\_\_

- 1. Provide a legal description of the property where the sewage system failed. In what county was the failed sewage system located?
2. Do you still own the property where the sewage system failed? If NO, what date did you sell the property? List the current property owner's name, address, and phone number:
3. What is the date that the contractor installed the sewage system?
4. What is the date that the health department approved the sewage system (issued an Operation Permit)?
5. What is the date that you filed an application to repair the failed system with the local health department?
6. What is the date that you received a notice from the health department indicating that the sewage system had apparently or actually failed?
7. If known, what is the household's average daily water use? gallons per day (GPD). If available, attach copy of previous 12 months of water use records.
8. Did the owner properly operate and maintain the failed sewage system as required by the system's designer and/or the manufacturer? If YES, attach the requirements. If NO, describe the O&M done or not done.
9. Was the failed sewage system installed in the correct location? If NO, describe where it was located. If available, attach survey plat showing owner's house and the location of the sewage system.

10. Was the failed sewage system installed correctly? \_\_\_\_\_ If No, please describe what defects were present:

\_\_\_\_\_

11. Did the site and soil conditions comply with the regulations where the contractor installed the failed sewage system? If NO, please describe how the soil conditions did not comply. \_\_\_\_\_

\_\_\_\_\_

12. What specific actions by the health department do you believe caused the system to fail within three years of its construction date?

\_\_\_\_\_

13. What was the cost of the failed system? \_\_\_\_\_ Attach a copy of receipts, invoices, bills of sale, and canceled checks to substantiate the cost.

14. List the date(s) that you made or hired a contractor to make repairs to the failed sewage system, describe what the repairs were on each date, and list the itemized cost for repairs on each date. Attach copy of receipts, invoices, bills of sale, and canceled checks to substantiate the costs incurred to repair the failed sewage system.

| Date of Repair | Describe the repair(s) | Cost of Repair |
|----------------|------------------------|----------------|
|                |                        |                |
|                |                        |                |
|                |                        |                |
|                |                        |                |

15. Has the local health department approved all of the repairs? \_\_\_\_\_ If YES, when did the local health department issue an operation permit for the repairs: \_\_\_\_\_

16. If you installed a new sewage system, has the local health department issued an operation permit for it? \_\_\_\_\_ How much did you pay to install the new system? \_\_\_\_\_ (Attach copy of receipts, invoices, canceled checks, bills of sale to substantiate the amount paid for a new system)

All information included with this application is true and complete to the best of my knowledge. I hereby give permission for Virginia Department of Health to enter on the above described property for the purpose of processing this application and investigating this claim.

Sign: \_\_\_\_\_  
(owner)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(owner)

\_\_\_\_\_  
(Date)

Appendix C

This RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT is made and entered into this \_\_\_\_\_ Day of \_\_\_\_\_, 2007, by and between \_\_\_\_\_, their HEIRS, SUCCESSORS, DEVISEES, AGENTS, ASSIGNS, REPRESENTATIVES and INTERESTS (hereinafter the “Owners”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health, including, without limitation, any and all of its agencies, boards, and commissions, her insurer(s), officers, directors, employees, representatives, and agents, (hereinafter the “COMMONWEALTH OF VIRGINIA”).

WHEREAS, Owners hold good title to a single family residence lying in \_\_\_\_\_ County at \_\_\_\_\_, (hereinafter the “Residence”); and,

WHEREAS, Owners received a construction permit from the local health department to install an onsite sewage system; and,

WHEREAS, Owners installed the onsite sewage system in accordance with the construction permit on or about \_\_\_\_\_; and,

WHEREAS, Owners received a permit to operate the onsite sewage system on or about \_\_\_\_\_; and,

WHEREAS, Owner’s notified the local health department that the onsite sewage system for the Residence failed in \_\_\_\_\_, within three years of its construction date; and,

WHEREAS, Owner requested assistance from the Onsite Sewage Indemnification Fund (hereinafter the “Fund”, § 32.1-164.1:01 of the Code of Virginia) administered by the Department of Health; and,

WHEREAS, the State Health Commissioner determined that Owners qualify for reimbursement from the Fund; and,

WHEREAS, Owners are the only persons entitled to reimbursement from the Fund; and,

WHEREAS, the Commissioner and Virginia Department of Health desire to protect public health and the environment and to resolve all matters in dispute, now and in the future with Owners,

NOW, THEREFORE, in exchange for the mutual promises contained herein, the COMMONWEALTH OF VIRGINIA and Owners agree as follows: That for and in consideration of \$\_\_\_\_\_ (thousand dollars and cents) paid from the Fund, the Owners agree to, and hereby do, release and hold harmless the COMMONWEALTH OF VIRGINIA, from any and all claims, complaints, demands, actions, causes of action, liabilities and obligations, of whatever source or nature, whether administrative, legal or equitable, whether known or unknown, which Owners now have or will have in the future relating to or arising from the onsite sewage system that failed and which is the basis for reimbursement, 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, Owners expressly release and hold harmless the COMMONWEALTH OF VIRGINIA from any and all further claims, actions, causes of action, or obligations under the Fund related to the onsite sewage system that failed and which is the basis for reimbursement.

Owners also agree to indemnify and hold harmless the COMMONWEALTH OF VIRGINIA for any sum of money or judgment against the COMMONWEALTH OF VIRGINIA, as well as costs and reasonable attorney fees incurred in the defense of any action arising out of or related to the onsite sewage system that failed and which is the basis for reimbursement.

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. Owners acknowledge that they may consult with an attorney concerning their rights and obligations, that they have been given time and opportunity to consider the Agreement with the COMMONWEALTH OF VIRGINIA, that they have read this Agreement, that they fully understand and agree 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, and that this constitutes the entire agreement between Owners and the COMMONWEALTH OF VIRGINIA.

Accepted:

Date \_\_\_\_\_ (SEAL)  
\_\_\_\_\_ (Owners)

Accepted:

Date \_\_\_\_\_ (SEAL)  
Program Manager for the Fund  
Virginia Department of Health

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF \_\_\_\_\_.

The foregoing instrument was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_.

Notary Public

My Commission expires: