



COMMONWEALTH of VIRGINIA

Karen Remley, MD, MBA, FAAP
State Health Commissioner

Department of Health
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RICHMOND, VA 23218

TTY 7-1-1 OR
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DATE: June 16, 2011

TO: District Health Directors
District Environmental Health Managers
Office of Environmental Health Services Staff
VPI/SU Soil Scientist

GMP #155

FROM: Karen Remley, M.D., M.B.A., F.A.A.P.
State Health Commissioner

THROUGH: Robert W. Hicks, Director
Office of Environmental Health Services

SUBJECT: Guidelines for Voluntary Upgrades to Onsite and Alternative
Discharging Sewage Systems.

Legislative Overview

Legislation approved in 2011 (Acts of Assembly, CH.394) amended Title 32.1 of the *Code of Virginia* as follows:

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-164.1:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-164.1:3 as follows:

§ 32.1-164.1:1. Validity of certain septic tank permits.

A. Any septic tank permit issued shall be valid for a period of 18 months from the date of issuance unless there has been a substantial, intervening change in the soil or site conditions where the septic system is to be located. However, if a building permit has been obtained or building construction has commenced, the permit may be extended for an additional 18 months. Applicants shall be informed of the septic tank permit validity period and advised to apply only when ready to begin construction.

B. Further, whenever any onsite sewage system is failing, *or 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 nor more than four dwelling units and the Board's regulations ~~for repairing such failing system~~ 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 from such requirements. The Commissioner shall grant any request for such waiver, unless he finds that the ~~failing~~ system was installed illegally without a permit. Any such waivers shall be recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located. Except as provided in subsection 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.

The owner of the relevant property shall disclose, in accordance with subsection D, that any operating permit for the onsite sewage system that has been granted a waiver authorized by this subsection shall be null and void at the time of transfer or sale of the property and that the Board's regulatory requirements for additional treatment or pressure dosing shall be required before an operating permit may be reinstated.

The provisions of this subsection shall apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson.

C. The following are specifically allowed under the provisions of subsection B:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
2. Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by a trustee under a deed of trust pursuant to a foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by deed in lieu of foreclosure.
3. Transfers not for value by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
4. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.
5. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

6. *Transfers pursuant to real estate purchase contracts where the owner has obtained a permit to voluntarily upgrade an onsite sewage system pursuant to § [32.1-164.1:3](#).*

7. Other transfers consistent with criteria established by the Board of Health and the Real Estate Board.

D. The owner of residential real property subject to subsection B shall 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 on or before January 1, 2006. Prior to that time, it shall be the obligation of the owner of such residential real property to prepare the written disclosure statement and provide it to the purchaser as otherwise provided herein.

E. If the disclosure required by subsection B is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of the following: (i) three days after delivery of the disclosure in person; (ii) five days after the postmark if the disclosure is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the execution by the purchaser of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract; or (vi) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan.

In order to terminate a real estate purchase contract when permitted by this subsection, the purchaser shall, within the time required by this chapter, give written notice to the owner either by hand delivery or by United States mail, postage prepaid, and properly addressed to the owner. If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this chapter shall end if not exercised prior to the earlier of (i) the making of a written application to a lender for a mortgage loan where the application contains a disclosure that the right of termination shall end upon the application for the mortgage loan or (ii) settlement or occupancy by the purchaser, in the event of a sale, or occupancy, or in the event of a lease with option to purchase.

F. A real estate licensee representing an owner of residential real property as the listing broker shall have a duty to inform each such owner represented by that licensee of the owner's rights and obligations under subsection B. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser shall have a duty to inform each such purchaser of the purchaser's rights and obligations under subsection B. Provided a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this section, and shall not be liable to any party to a residential real estate transaction for a violation of subsection B or for any failure to disclose any information regarding any real property subject to subsection B.

G. For the purposes of this section:

"Acceptance" means the full execution of a real estate purchase contract by all parties; ~~and~~.

"Real estate purchase contract" means a contract for the sale, exchange, or lease with option to buy of real estate subject to this section.

H. The Real Estate Board shall enforce subsections D, E, and F pursuant to the provisions of Chapter 21 of Title 54.1 (§ [54.1-2100](#) et seq.).

§ [32.1-164.1:3](#). *Permits for voluntary system upgrades.*

Any owner desiring to voluntarily upgrade an onsite or alternative discharging sewage system that is not failing shall file an application, according to instructions from the Board, to obtain a construction permit to improve the system in accordance with the laws and regulations of the Board for repairing failing systems, provided such upgrade is for the purposes of reducing threats to the public health, or to ground and surface waters, including the reduction of nitrogen discharges.

The Department shall attach a statement to any permit issued pursuant to this section clearly stating that the upgrades specified in the permit are voluntary and not required by law. The Department may require the owner to indemnify and hold harmless the Department prior to the issuance of any such permit. Any permits issued pursuant to this section shall be subject to the provisions of § [32.1-164.1:1](#).

2. That an emergency exists and this act is in force from its passage.

Background

Owners of onsite and alternative discharging sewage systems may wish to upgrade those systems even when they are not failing. These types of requests typically arise during real estate transactions when a private inspector has indicated that an existing sewage system is not performing adequately, or when an owner desires to enhance the performance or extend the life of his system. Historically, the Virginia Department of Health (VDH) has been unable to issue permits for many of these owners because site conditions do not meet the minimum regulatory requirements and the repair clauses of the controlling regulations could not be invoked because the systems are not failing as defined by those regulations. The recent changes to the *Code of Virginia (Code)* allow and require VDH to issue construction permits for voluntary upgrades of non-failing systems using the same rules that would apply to the systems if they were failing.

Under the new legislation, a new system must comply with current regulations if possible. For onsite sewage systems, if such compliance is not possible, the permit must comply with Parts IV and V of the *Sewage Handling and Disposal Regulations* (12VAC5-610, SHDR) to the greatest extent possible. Where compliance with the SHDR would require the use of additional treatment or pressure dosing that was not required by the original construction permit, the owner may request a waiver to the use of additional treatment and/or pressure dosing. A waiver shall be granted if requested. Unlike waivers granted to repair failing onsite sewage systems, waivers granted for voluntary upgrades are not null and void 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.

Scope/Applicability

This policy provides guidance for VDH staff and the public for implementing the new 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 and serves four or fewer residential dwelling units. Upgrades shall be for the purposes of reducing threats to public health or to ground and surface waters. Dwellings may or may not be occupied. **There shall not be any proposed increase in flow or strength of sewage from what is currently permitted.** Any increase in sewage flow or strength requires that the owner modify an existing system, thereby making it ineligible for a permit under the voluntary upgrade statute. System modifications or upgrades that are required *for any reason*, including the authorization of building permits pursuant to *Code* § 32.1-165, building expansions, replacement of faulty components, and the repair of failing systems are not considered to be voluntary and *are not covered by this policy*.

Definition

Voluntary upgrade –A change to or replacement of an existing non-failing onsite or alternative discharging sewage disposal system without an increase in the permitted volume or strength of sewage in accordance with the regulations for repairing failing systems for the purposes of reducing threats to the public health or to ground and surface waters.

Procedure

Immediately, VDH will accept applications and designs for voluntary upgrades of onsite and alternative discharging sewage disposal systems. Applications must include a description of the nature of the voluntary upgrade requested.

Application fees will be waived following 12VAC5-620-80.C.

Applications will be reviewed following current VDH policy.

If necessary, voluntary upgrade applications will be granted an exception in accordance with 12VAC5-610-280.C.2. which requires the upgraded system serving a dwelling with indoor plumbing to comply with Parts IV and V of the SHDR to the greatest extent possible. 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.

If site conditions in any new soil absorption area require additional treatment or pressure dosing that was not a requirement of the original permit for the existing sewage system, the owner may request a waiver. (See Appendices A and B.)

Owners who apply for voluntary upgrade permits must indemnify and hold harmless VDH prior to the issuance of a construction permit. (See Appendix C)

All construction permits issued for voluntary upgrades shall have the following statement attached: “The upgrades specified in this construction permit are completely voluntary and not required by law.”

Appendix A

Date

Owner Name
Address
City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] County Health Department received your application for a voluntary upgrade sewage system permit which [did/did not] include supporting documentation from an Onsite Soil Evaluator (OSE) licensed by the Department of Professional and Occupational Regulation or a Professional Engineer (PE) licensed in Virginia. Based on the site and soil evaluations (copy attached), the conditions on your lot do not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20, as amended July 1, 2000, the *Regulations*) for a Septic Tank Effluent (STE, *Regulations*, § 594) system for the following reasons:¹

(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.

In order to assure that public health and groundwater supplies are protected and that the risk for human disease transmission is minimized, the voluntary upgrade system for your property must have Treatment Level 2 Effluent (TL-2)² or Treatment Level 3 Effluent (TL-3)³, pressure dosing⁴, or both as part of your voluntary upgrade design unless these requirements are waived pursuant to Va. Code § 32.1-164.1:1. **[Note: modify this paragraph to fit the specific situation]** Va. Code § 32.1-164.1:1 provides an opportunity for you to receive a Waiver from the requirements for TL-2 or TL-3 effluent, pressure dosing, or both as long as your system was not installed illegally without a permit and as long as there was no requirement for these in your original permit and approval documents. I have determined that you are eligible for the Waiver if you choose to apply for it.

Employees of the Virginia Department of Health (VDH) typically do not design sewage systems with TL-2 or TL-3 effluent 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 or 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 all product manufacturers.

If you choose to receive the Waiver, VDH staff will design your system, at your request, as long as the requirements are relatively simple. If you do not want to receive the Waiver or if you do not want VDH to

¹ Septic Tank Effluent means "effluent characterized by a five-day biochemical oxygen demand between 120 and 200 mg/l; total suspended solids between 70 and 150 mg/l; fats, oils, and grease of 30 mg/l or less; and having no other toxic, hazardous, or constituents not routinely found in residential wastewater flows (*Regulations*, § 120)."

² Treatment Level 2 Effluent or TL-2 Effluent means effluent that has been treated to produce BOD₅ and TSS concentrations equal to or less than 30 mg/l each.

³ Treatment Level 3 Effluent or TL-3 Effluent means effluent that has been treated to produce BOD₅ and TSS concentrations equal to or less than 10 mg/l each.

⁴ Pressure Dosing means any system under the *Regulations* that requires a pump to pressurize a dosing system or device. Examples include drip dispersal, drip irrigation, manifold systems, mound systems, and low pressure distribution systems, etc. The definition does not include gravity systems, systems that pump to a higher elevation (distribution box with or without enhanced flow), or systems that require a pump because the ground surface over the soil absorption area is higher than the elevation of the lowest fixture in the house.

Owner' Name
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design your system, you will need to hire a qualified consultant to design the voluntary upgrade for your sewage system. Currently, VDH recognizes PEs for any type of system design and OSEs for certain system designs that do not require the practice of engineering. If you wish to receive the Waiver and **do not** want VDH to design the voluntary upgrade system, please complete the enclosed Waiver Request, Agreement, and Waiver document ("Waiver") and return it to this office with your OSE or PE plans for the voluntary upgrade system- **do not check the box requesting VDH to design your system**. If you want the Waiver and prefer that VDH design your system, simply complete the Waiver, check the design request box, and return it to our office (address noted on the letterhead). Your application must include a description of the nature of the upgrade you are requesting. As soon as we receive this information, we will process your application accordingly.

If you are signing the Waiver agreement, you will need to have your signature notarized. This is a legal document and you should review it carefully. You may wish to seek legal advice from an attorney to explain what the Waiver means. The law requires that you record the Waiver in the land records of the clerk of the circuit court in the jurisdiction in which your property is located. A Waiver may be transferred pursuant to real estate purchase contracts where the owner has obtained a permit to voluntarily upgrade an onsite sewage system pursuant to § 32.1-164.1:3.

If you want an OSE or PE to design your system under the Waiver, please remember to tell your consultant so that he can submit plans that incorporate your wishes. VDH will not change your expert's design and an OSE or PE must approve the system's final construction.

If you request the Waiver and ask for a VDH design, please remember that VDH does not have the resources to consider, inform, and consult with you about all of the design options available in the marketplace for a voluntary upgrade. There are hundreds of design options and potentially hundreds of products from which to choose within each possible design. Depending on your specific needs, please consider that VDH could design a system that would not meet your immediate or long-term interests because of our lack of resources to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves (or denies) requests from product manufacturers- we cannot recommend one product over another just as we cannot design or recommend a specific proprietary pre-engineered system. Without being able to recommend certain products or proprietary designs because of our unique position as a regulator and having scarce resources to provide you with detailed consultation, it is possible that you could get an inferior design 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.

A system installed under a Waiver does not comply with the *Regulations* which were adopted by the Board of Health to provide the least intrusive methods to adequately protect groundwater supplies and public health; therefore VDH cannot advise you about liability issues should your system fail and adversely impact drinking water supplies.

You have the right to challenge the results of VDH's site and soil evaluations and the decisions we have 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 your receipt of this letter. Please call me at (____) ____ - ____ if you have more questions.

Sincerely,

EHSS

Appendix B

VOLUNTARY UPGRADE
REQUEST FOR WAIVER, RELEASE, HOLD HARMLESS
and INDEMNIFICATION AGREEMENT, & WAIVER

This document, which includes a REQUEST FOR WAIVER, a RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT, and a WAIVER (collectively, "AGREEMENT"), is made and entered into this _____ Day of _____, 2011, by and between [insert full legal name of Owner or Owners], his/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 the COMMONWEALTH OF VIRGINIA).

WHEREAS, OWNER is the owner of that certain parcel described as _____ **[insert legal description of property]** containing, among other improvements, a structure consisting of _____ [describe occupied structure- i.e. four bedroom single family dwelling] (hereinafter "PROPERTY"); and

WHEREAS, the DEPARTMENT has determined that, under the *Sewage Handling and Disposal Regulations*, 12VAC5-610 ("REGULATIONS"), the voluntary upgrade system must provide Treatment Level 2 Effluent or Treatment Level 3 Effluent and/or Pressure Dosing in order to adequately protect public health and ground and surface water resources; and

WHEREAS, § 32.1- 164.1:1 of the *Code of Virginia* provides that whenever an owner has elected to voluntarily upgrade an onsite sewage disposal system pursuant to 32.1-164.1:3 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, an owner may request a waiver (hereinafter "WAIVER") from the requirements of the REGULATIONS pertaining to Treatment Level 2 Effluent or Treatment Level 3 Effluent and/or Pressure Dosing for a voluntary upgrade system; and

WHEREAS, the State Health Commissioner shall grant such WAIVER, provided that the owner's existing system to be upgraded was not installed illegally without a permit; and

WHEREAS, the DEPARTMENT, as designee of the State Health Commissioner, has determined and OWNER affirms that the existing system to be upgraded currently serving the PROPERTY was not installed illegally without a permit, and

REQUEST FOR WAIVER

WHEREAS, OWNER, by executing this AGREEMENT, hereby requests that the State Health Commissioner grant the WAIVER provided at §32.1-164.1:1 B. of the *Code of Virginia* from the requirements for _____ Treatment Level 2 Effluent or _____ Treatment Level 3 Effluent and/or _____ Pressure Dosing.

WAIVER

NOW, THEREFORE, in exchange for the mutual promises contained herein, the parties agree as follows:

The WAIVER provided at §32.1-164.1:1 B. of the *Code of Virginia* is hereby granted and shall be effective 24 hours after OWNER provides certification to the DEPARTMENT that this AGREEMENT has been recorded in the land records of the Circuit Court having jurisdiction over the PROPERTY.

RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT

OWNER agrees to, and hereby does, release 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 OWNER now has or may have in the future relating to or arising from the WAIVER, 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 COMMONWEALTH OF VIRGINIA 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 WAIVER.

OWNER also agrees to hold harmless and indemnify the COMMONWEALTH OF VIRGINIA for any sum of money or judgment against the COMMONWEALTH OF VIRGINIA, as well as costs

and reasonable attorneys' fees incurred in the defense of any action arising out of or related to the WAIVER.

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 COMMONWEALTH OF VIRGINIA, 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 COMMONWEALTH OF VIRGINIA.

[Name]

District Health Director

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 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. OWNER furthermore understands and affirms that the DEPARTMENT cannot provide such in-depth consulting as OWNER might need or desire, and that it may be in OWNER's best interests to seek advice from competent private professionals to discuss the legal and financial considerations for all of the possible design options available in the marketplace. OWNER acknowledges and accepts that OWNER may receive an inferior design from the DEPARTMENT because the DEPARTMENT has limited resources for detailed consulting and because the DEPARTMENT cannot propose specific proprietary products which may benefit OWNER because of its regulatory relationship with manufacturers. OWNER acknowledges and understands that OWNER may receive a more complete and well-advised design if OWNER seeks advice from private consultants because private consultants are not subject to the same resource restrictions and regulatory relationships as the DEPARTMENT.

Understood and Accepted:

[Full Legal Name of Owner or Owners]

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____.

On this the _____ day of _____, 2011, 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 _____

ID# _____

My Commission expires:

Appendix C

VOLUNTARY UPGRADE
RELEASE, HOLD HARMLESS
and INDEMNIFICATION AGREEMENT

This document, which includes a RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT, (collectively, "AGREEMENT"), is made and entered into this _____ day of _____, 2011, by and between [insert full legal name of Owner or Owners], his/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 the COMMONWEALTH OF VIRGINIA).

WHEREAS, OWNER is the owner of that certain parcel described as _____ **[insert legal description of property]** containing, among other improvements, a structure consisting of _____ [describe occupied structure- i.e. four bedroom single family dwelling] (hereinafter "PROPERTY"); and

WHEREAS, the DEPARTMENT has determined that, under Permits for voluntary upgrades, §32.1-164.1:3 of the *Code of Virginia*, a construction permit (hereinafter "VOLUNTARY UPGRADE PERMIT") has been issued; and

WHEREAS, the DEPARTMENT, as designee of the State Health Commissioner has determined and OWNER affirms that the existing system to be upgraded currently serving the PROPERTY was not installed illegally without a permit.

RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT

OWNER agrees to, and hereby does, release 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 OWNER now has or may have in the future relating to or arising from the VOLUNTARY UPGRADE PERMIT, 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 COMMONWEALTH OF VIRGINIA 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 PERMIT.

OWNER also agrees to hold harmless and indemnify the COMMONWEALTH OF VIRGINIA for any sum of money or judgment against the COMMONWEALTH OF VIRGINIA, as well as costs and reasonable attorneys' fees incurred in the defense of any action arising out of or related to the VOLUNTARY UPGRADE PERMIT.

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 COMMONWEALTH OF VIRGINIA, 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 COMMONWEALTH OF VIRGINIA.

[Name]

District Health Director

Understood and Accepted:

[Full Legal Name of Owner or Owners] _____
Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____.

On this the _____ day of _____, 2011, 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 _____

ID # _____

My Commission expires:
