

July 1, 2019

MEMORANDUM

TO: District Health Directors
Environmental Health Managers
Office of Environmental Health Services Staff
Onsite Soil Evaluators
Professional Engineers
Onsite System Operators and Installers
Water Well System Providers

GMP #2019-01

THROUGH: M. Norman Oliver, MD, MA
State Health Commissioner

THROUGH: Allen Knapp, Director
Office of Environmental Health Services

FROM: Lance Gregory, Director
Division of Onsite Sewage and Water Services, Environmental Engineering,
and Marina Programs

SUBJECT: GUIDANCE MEMORANDA AND POLICY (GMP) 2019-01
Section 32.1-248.4 of the Code of Virginia; Hardship Guidelines

PURPOSE: This policy outlines the procedure for means testing of owners who petition the Virginia Department of Health (VDH) for evaluation and design services for onsite sewage systems and private well pursuant to [§ 32.1-248.4 of the Code of Virginia](#) (the Code). This policy also establishes Hardship Guidelines whereby the Virginia Department of Health (VDH) may serve as a provider of last resort for evaluation and design services for onsite sewage systems and private wells pursuant to § 32.1-248.4 of the Code.

SCOPE:

This policy outlines the procedure for means testing of owners who petition the Virginia Department of Health (VDH) for evaluation and design services for onsite sewage systems and

private well pursuant to § 32.1-248.4 of the Code ([HB 888](#)). This policy also establishes Hardship Guidelines necessary to implement the transition of evaluation and design services for onsite sewage systems and private wells to the private sector, while maintaining VDH as a provider of last resort as outlined in § 32.1-248.4 of the Code. Owners requesting eligible evaluation and design services that do not meet the income eligibility criteria established in the Code or meet the Hardship Guidelines are required to obtain evaluation and design services from the private sector.

AUTHORITY:

Section 32.1-248.4 of the Code, as amended and effective July 1, 2018, provides authority for VDH to gradually transition evaluation and design services for onsite sewage systems and private wells to the private sector. The Code authorizes VDH to continue providing evaluation and design services associated with a building permit for a principal place of residence or the repair of a system that is for a principal place of residence from July 1, 2019 to June 30, 2023 for owners that meet income eligibility criteria specified in § 32.1-248.4 of the Code. The Code also authorizes VDH to establish guidelines to maintain VDH as a provider of last resort for owners who demonstrate a specific hardship in obtaining private sector evaluation and design services associated with a building permit for a principal place of residence or the repair of a system that is for a principal place of residence.

BACKGROUND:

VDH staff have historically served as the primary provider of site and soil evaluations and designs in the Commonwealth for onsite sewage systems and private wells. However, several pieces of legislation approved in the 1990's created a process for VDH to accept evaluations and designs from private sector service providers. Since that time, two overarching principles have emerged: VDH should continue providing regulatory oversight; and VDH should increase private sector participation to the extent possible. Over time, and without a specific statutory mandate to require private evaluations and designs, the use of private sector service providers gained broad acceptance in many parts of the Commonwealth, primarily in those areas with higher property values and higher rates of growth. However, areas of low private sector participation persist today, particularly in more rural areas of the Commonwealth.

In 2016, VDH released A Plan for the Orderly Reduction and Elimination of Evaluation and Design Services by the Virginia Department of Health for Onsite Sewage Systems and Private Wells ([HB 558 Report](#)). The HB 558 Report detailed VDH's strategic vision to shift evaluation and design services for onsite sewage systems and private wells to the private sector in an orderly manner so limited VDH resources can be focused on improving public health and the environment. The HB 558 Report presented 20 specific recommendations to implement the strategic vision, including means testing by VDH of owners over an initial transition period and establishing guidelines for VDH serving as a provider of last resort for owners that demonstrated specific hardships in obtaining private sector services. VDH recognized several geographic areas within the Commonwealth, as well as several application types, will be particularly difficult to transition to the private sector. VDH recommended means testing and the

development of guidelines to address situations in which owners could demonstrate a hardship in obtaining private sector services to ensure access to onsite sewage system and private well evaluation and design services for all Virginians.

Chapter 602 of the 2017 Virginia Acts of Assembly ([HB 2477](#)) directed VDH to begin eliminating site evaluation and design services for onsite sewage systems and private wells. This was accomplished by enacting recommendations from the HB 558 Report through agency policy. In 2018, the Virginia General Assembly created § 32.1-248.4 of the Code ([HB888](#)) directing VDH to enact the remaining recommendation from the HB 558 Report to complete the transition of evaluation and design services to the private sector. Section 32.1-248.4 of the Code provides a plan to transition onsite sewage system and private well evaluation and design services to the private sector over five years. However, the Code maintains the ability for VDH to provide evaluation and design services throughout the transition based on means testing of owners. Section 32.1-248.4 of the Code also continues the authorization for VDH to provide evaluation and design services throughout and after the five-year transition period for owners demonstrating a specific hardship acquiring private sector evaluation and design services associated with a building permit for a principal place of residence or the repair of a failing system serving a principal place of residence.

Section 32.1-248.4 of the Code sets out specific income eligibility criteria for means testing of owners from July 1, 2019 to June 30, 2023, using the federal poverty guidelines. The Code also directs VDH to develop guidelines for hardships, including (i) the availability of properly licensed service providers working within a locality or region, (ii) the disciplinary history of private sector providers, and (iii) the cost of private sector services. The hardship guidelines established by this policy set the criteria for owners to request onsite sewage system and private well evaluation and design services from VDH as directed by § 32.1-248.4 of the Code.

EXCLUSIONS FROM MEANS TESTING AND HARDSHIP GUIDELINES

Pursuant to § 32.1-248.4 of the Code all owners must seek private sector services for the following beginning July 1, 2018: onsite sewage system voluntary upgrades, certification letters, subdivision evaluations, and applications for new onsite sewage systems that are not for a principal place of residence. The means testing criteria and hardship guidelines outlined in this policy do not apply to these application types.

Evaluations and design types requiring private sector design services prior to July 1, 2018, by VDH policy are ineligible for VDH services. These services include evaluation or design for: non-residential onsite sewage systems; onsite sewage systems with a design flow over 1,000 gallons per day; alternative onsite sewage systems; alternative discharging sewage systems; and onsite sewage system designs requiring the services of a professional engineer.

MEANS TESTING:

Beginning July 1, 2019, and until June 30, 2020, owners that submit a complete application with a household income at or below 400 percent of the federal poverty guidelines established by the [U.S. Department of Health and Human Services](#) (federal poverty guidelines) may receive VDH evaluation and design services for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) and safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165).¹ Owners seeking such services must first petition VDH to provide services using the Petition for VDH Services Form (Appendix A). Means testing of the owner's income shall follow the same procedure as the determination of income eligibility for fee waivers (see VDH's [Eligibility Guidance Document for the Regulations Governing Standards & Charges for Medical Care Services to Individuals](#) or successor policy).

Eligibility shall be reduced to owners over the course of the next four years as outlined below.

Dates	Household Income at or Below
July 1, 2020 to June 30, 2021	300%
July 1, 2021 to June 30, 2022	200%
July 1, 2022 to June 30, 2023	100%
On and after July 1, 2023	Means testing ends.

A detailed listing of the specific means testing criteria from July 1, 2019, to June 30, 2020 is included in Appendix B.

HARDSHIP GUIDELINES:

Owners that do not meet the means testing criteria outlined in § 32.1-248.4 of the Code, may still be eligible to receive services from VDH. Owners meeting any of the following hardships shall be eligible to receive VDH evaluation and design services for: a) new or repair conventional onsite sewage systems serving a principal place of residence; b) private wells; and c) safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by [§ 32.1-165](#) of the Code). Owners seeking services based on the following hardship guidelines must petition VDH to provide services using the Petition for VDH Services Form.

- A. Owners Eligible for Fee Waivers for Construction Permits, Repair Permits, and Pit Privies.

¹ This includes projects that will be wholly or partially funded by public funds or funds from a non-profit organization, provided the evaluation and design services required are outside of the exclusions of this policy (e.g. evaluations and designs for conventional onsite sewage systems equal to or less than 1,000 GPD).

In addition to the specific means testing criteria outlined in § 32.1-248.4 of the Code, VDH has established the following income eligibilities as hardships that will apply prior to and after July 1, 2023. Any owner that is eligible to receive a fee waiver pursuant to section [12VAC5-620-80.A](#) of the [Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells](#) (12VAC5-620, the Fee Regulations) shall be eligible to receive VDH evaluation and design services.² Further, any owner with income below 200 percent of the federal poverty guidelines shall be eligible to receive VDH evaluation and design services when the application is for a pit privy or for a repair of a failing onsite sewage system.³ Determination of eligibility for a hardship based on income shall follow the same procedure as the determination of income eligibility for fee waivers (see [VDH's Eligibility Guidance Document for the Regulations Governing Standards & Charges for Medical Care Services to Individuals or successor policy](#)).

B. Replacement Wells and Well Abandonments.

Any owner that is eligible to receive a fee waiver for the replacement or abandonment of a private well pursuant to section [12VAC5-620-80.D](#) or [12VAC5-620-80.E](#) of the Fee Regulations shall be eligible to receive VDH evaluation and design services.⁴

C. Safe, Adequate, and Proper Evaluations.

Any owner seeking a safe, adequate, and proper evaluation for a conventional onsite sewage systems serving a principal place of residence (as required by § 32.1-165 of the Code) shall be eligible to receive VDH evaluation services from July 1, 2019 to June 30, 2020. Over this period, VDH will use improved data collection regarding the number of safe, adequate, and proper evaluations conducted by private sector service providers to generate an appropriate map and list of localities in Appendix D.

D. Number of Private Sector Providers.

Any owner seeking evaluation and design services in a locality with an insufficient number of private sector service providers shall be eligible to receive VDH evaluation and design services. A locality will be deemed to have an insufficient number of private sector service providers when the number of bare applications received in the locality from May 1st of the previous year to April 30th of the current calendar year that resulted in the issuance of a

² Section 12VAC5-620-80.A establishes the fee waiver when an owner whose family income is at or below the 2013 Poverty Income Guidelines for the 48 Contiguous States and the District of Columbia established by the [Department of Health and Human Services, 78FR 5182](#) (January 24, 2013), or any successor guidelines, shall not be charged a fee.

³ This includes projects that will be wholly or partially funded by public funds or funds from a non-profit organization, provided the evaluation and design services required are outside of the exclusions of this policy (e.g. evaluations and designs for conventional onsite sewage systems equal to or less than 1,000 GPD).

⁴ Section 12VAC5-620-80.D allows the fee to be waived for any person applying for a construction permit for the replacement of a private well. Section 12VAC5-620-80.E allows the fee to be waived for any person applying for a permit to properly and permanently abandon or decommission an existing well on property that is their principal place of residence.

permit exceeds the estimated number of additional designs that the private sector could provide in that locality. Once a locality is determined to have a sufficient number of private sector services providers, it shall maintain that designation. VDH will estimate the number of additional designs that the private sector could provide in a locality by using the following equation:

$$(P \times A) G - W = X$$

P = Number of private sector providers that submitted at least five evaluations and designs within the locality from May 1st of the previous year to April 30th of the current calendar year.⁵

A = Average number of evaluations and designs per private sector provider submitted within the region from May 1st of the previous year to April 30th of the current calendar year that resulted in a permit. (A map showing the specific regions is provided below; Map 1.)

G = Private sector growth factor. For the July 1, 2019 to June 30, 2020, G will equal 1.25. For July 1, 2020 to June 30, 2021, G will equal 1.5. From July 1, 2021 to June 30, 2022, G will equal 1.75. From July 1, 2022 to June 30, 2023, G will equal 2.

W = Total number of private sector evaluations and designs submitted within the locality from May 1st of the previous year to April 30th of the current calendar year that resulted in a permit.

X = Estimated number of additional evaluations and designs that could be provided by the private sector.

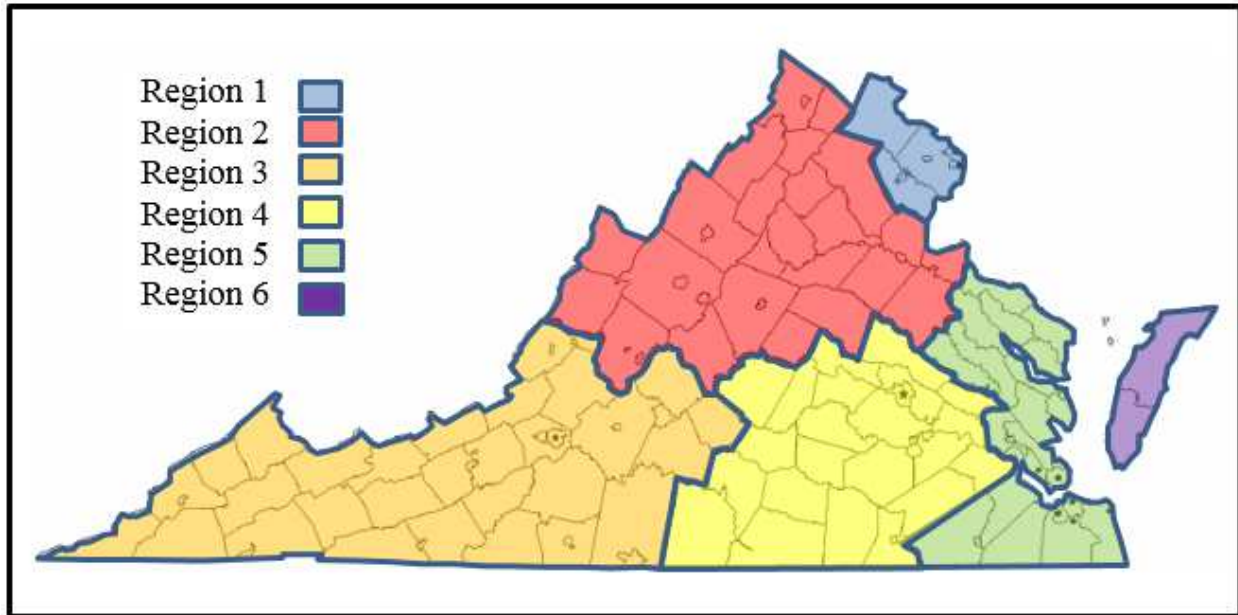
Any locality receiving 10 or fewer total applications during the review period (from May 1st of the previous year to April 30th of the current calendar year for the review) will be determined to have a sufficient number of private sector service providers. Any locality that receives more than 10 total applications during the review period (from May 1st of the previous year to April 30th of the current calendar year for the review), but has less than two private sector service providers submitting at least five evaluations and designs each during the review period (from May 1st of the previous year to April 30th of the current calendar year for the review) will be determined to have an insufficient number of private sector service providers.

VDH will use the agency's statewide environmental health database to determine P, A, and W. For determining the average number of private sector designs, VDH will use Map 1 to set each region for review, and will include only private sector providers submitting at least 10 evaluations and designs within the region during the review period (from May 1st of the previous year to April 30th of the current calendar year for the review). The equation will be run separately for onsite sewage system evaluations and designs, private well evaluations and designs, and safe, adequate, and proper evaluations. Therefore, it may be determined that a

⁵ For onsite sewage system construction services, "private sector providers" will include Onsite Soil Evaluators (OSE) and Professional Engineers (PE). For private well construction services, "private sector providers" will include OSEs, PEs, and Water Well System Providers. For safe, adequate, and proper evaluations, "private sector providers" will include OSEs, PEs, Onsite Sewage System Installers, Onsite Sewage System Operators, and individuals certified by the National Sanitation Foundation (or equivalent).

locality has an insufficient number of private sector service providers for one service, but an adequate number of private sector service providers for the others.

Map 1: Service Provider Regions



VDH will post a list of localities (independent cities and counties) with an insufficient number of private sector services providers on the agency website. The list will be updated annually using information from the agencies statewide environmental health database for the review period (from May 1st of the previous year to April 30th of the current calendar year for the review) and will follow applicable requirements for posting and public comment. A copy of the list is included in Appendix D.

Private sector service providers that receive a disciplinary action, that is not a revocation or suspension, against their license from the Department of Professional and Occupational Regulations (DPOR) will not be counted towards the number of private sector providers submitting evaluations and designs within a locality during the review period (from May 1st of the previous year to April 30th of the current calendar year for the review) in which the disciplinary action was in effect by DPOR. Service providers with revoked or suspended licenses likewise will not be counted while their license is revoked or suspended.

E. Further Considerations.

Owners that do not qualify for a specific hardship outlined in this policy may petition the District Health Director for further consideration provided the requested evaluation and design service is not exempt from the hardship guidelines. The District Health Director may delegate review of such request to the District Environmental Health Manager. Such requests will be reviewed on a case-by-case basis, and the final determinations will be tracked by each local health district. The reviewer's evaluation shall consider the effect granting the request will have

on: the agency's vision to transition evaluation and design services to the private sector; the operation of the proposed onsite sewage system or private well; and the effect on protection of public health and the environment. Additionally, request for further consideration based on timeliness of service shall consider: the number and the types of service providers contacted by the owner prior to the request (e.g. operators and installers may be able to diagnose repairs to a failing system that can be completed as maintenance without the services of a designer).

F. Annual Review.

VDH will conduct a review of this policy annually until at least July 1, 2023, and make revisions as deemed necessary. Annual reviews will continue until all applications received are supported by evaluations and designs from private sector service provider. The review shall include the following:

1. Recommendations for revisions provided by the Sewage Handling and Disposal Advisory Committee and other stakeholders.
2. Analysis of requests for VDH services pursuant to income eligibility criteria in Part 1, §4 of § 32.1-248.4 of the Code to determine whether the income eligibility criteria in part A of the Hardship Guidelines should be revised.
3. Analysis of the estimated number of additional evaluations and designs that could be provided by the private sector within localities versus the actual increases observed for the review period (May 1st of the previous year to April 30th of the current calendar year of the review) to determine whether modification to the equation in Section IV is necessary.
4. Analysis of hardship request for further considerations and determinations rendered for each case by District Health Directors to determine whether additional specific hardships or exclusion are necessary.
5. Analysis of the percent of private sector safe, adequate, and proper evaluations.
6. Analysis of the percent of private sector evaluations and designs for alternative onsite sewage system and conventional onsite sewage systems to determine whether additional verification of owner disclosure is required.⁶
7. To assist owners in making informed decisions regarding onsite sewage system and private well evaluation and design services, VDH will conduct surveys regarding the cost of private sector services. Information regarding the average cost of private sector services will be posted on the agency website.
8. Update the policy based on changes to the Federal Poverty Guidelines.

A copy of VDH's annual review shall be posted on the agency website.

⁶ Private sector service providers are required to disclose to the owner when a conventional onsite sewage system is an option.

Appendix A (Updated 7/1/21)
Virginia Department of Health
Petition for VDH Services Form

I, (owner name), am petitioning VDH to provide evaluation and design services based on (select one):

Means test (household income at or below 200% of the federal poverty guidelines)

Persons in Household	200% Federal Poverty Guidelines
1	\$25,760
2	\$34,840
3	\$43,920
4	\$53,000
5	\$62,080
6	\$71,160
7	\$80,240
8	\$89,320

VDH Hardship Guidelines

If you selected VDH Hardship Guidelines, please check all of the following guidelines that apply:

Qualify for fee waiver pursuant to 12VAC5-620-80.A.

Replacement well.

Well abandonment.

Safe, Adequate, and Proper Evaluation.

Onsite sewage system repair or pit privy fee waiver.

Insufficient number of private sector service providers.

Other: If other, please provide a detailed description of your hardship in obtaining private sector evaluation and design services along with any relevant documents that you believe supports your request. Please provide the names of private sector service providers you contacted, prior to submitting this petition. (Detailed description can be attached)

Owners/Agents Signature

Date

(Office Use Only) Petition for services Approved Denied

Reviewed by _____

Date

Appendix B
U.S. Department of Health and Human Services
Federal Poverty Guidelines (FPG)

Means Testing Criteria - July 1, 2021 to June 30, 2022

Persons in Household	200% Federal Poverty Guidelines
1	\$25,760
2	\$34,840
3	\$43,920
4	\$53,000
5	\$62,080
6	\$71,160
7	\$80,240
8	\$89,320

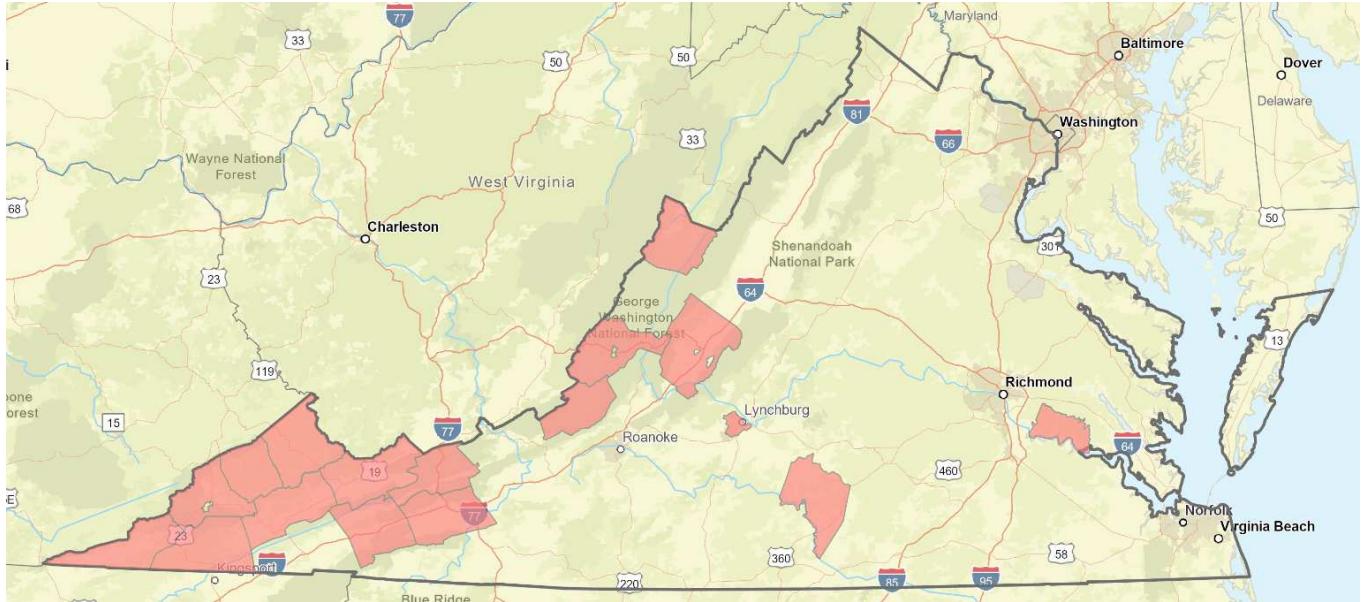
Source: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation;
<https://aspe.hhs.gov/poverty-guidelines>

(Update 7/1/21)

Appendix C
Hardship Guidelines Summary

Excluded from Hardship Evaluation	Qualify for Hardship
Onsite Sewage System Voluntary Upgrades	New Onsite Sewage System for a Principal Place of Residence– Owner Qualifies for Fee Waiver Under 12VAC5-620-80
Certification Letters	All SAPs
Subdivision Evaluations	Replacement Wells
New Onsite Sewage Systems Not For a Principal Place of Residence	Well Abandonments
Non-residential Onsite Sewage Systems	Conventional Onsite Sewage System Repairs – Owner income below 200% of Federal Poverty Guidelines
Onsite Sewage Systems Greater than 1,000 GPD	Pit Privy – Owner income below 200% of Federal Poverty Guidelines
Alternative Onsite Sewage Systems	VDH Determines Locality Has an Insufficient Number of Private Sector Service Providers (Includes Localities With Fewer Than 2 Private Sector Services Providers Submitting at Least 5 Evaluations and Designs Each During the Review Period).
Alternative Discharging Sewage Systems	
Systems Requiring a Professional Engineer	
Localities Receiving 10 or Fewer Total Applications	

Appendix D
Localities with an Insufficient Number of Service Providers – Onsite Sewage System
Construction



List of Localities Meeting Hardship

Alleghany
Charlotte
Lee
Scott
Wythe

Bland
Craig
Lynchburg
Smyth

Buchanan
Dickenson
Rockbridge
Tazewell

Charles City
Highland
Russell
Wise

(Updated 7/1/21)

Localities with an Insufficient Number of Service Providers – Private Well Construction

List of Localities Meeting Hardship

Accomack	Alleghany	Amelia	Amherst
Appomattox	Augusta	Bath	Bedford
Botetourt	Brunswick	Buckingham	Carroll
Charles City	Charlotte	Chesapeake	Chesterfield
Clarke	Craig	Cumberland	Essex
Franklin Co.	Giles	Gloucester	Grayson
Greene	Halifax	Hampton	Henry
Isle of Wight	James City	King & Queen	Lancaster
Lee	Lunenburg	Mathews	Middlesex
Nelson	Northampton	Northumberland	Nottoway
Page	Patrick	Pittsylvania	Powhatan
Prince William	Pulaski	Rappahannock	Richmond Co.
Roanoke Co.	Rockbridge	Russell	Scott
Shenandoah	Smyth	Southampton	Suffolk
Surry	Sussex	Tazewell	Virginia Beach
Washington	Westmoreland	Wythe	York

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Localities with an Insufficient Number of Service Providers – Safe, Adequate, and Proper
Evaluations

All localities. Safe, adequate, and proper evaluations are listed as an eligible hardship.

Appendix E
Onsite Sewage and Private Well Application