

# **A Rural Environmental Injustice Case Study**

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**The opinions found in this presentation do not reflect the opinions of NOWRA.**

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# A case study of Governing Powers

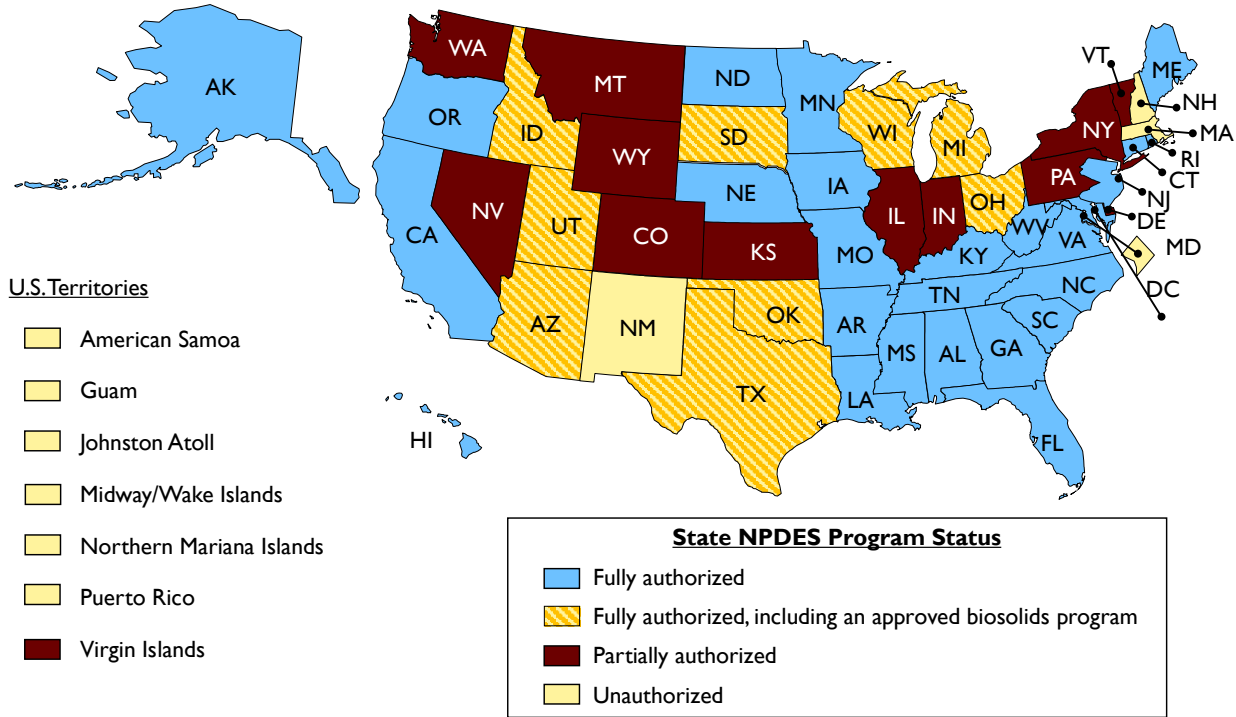
- Does a county administration exhibit environmental injustice by denying a direct system discharge (DSD) permit where the Department of Environmental Quality and the Virginia Department of Health has agreed to provide this federal permit thus making a DSD lawful?

# The Story

- We are at an impasse. The health department advises the homeowner that the county will not allow a DSD.
- Without the permit, the home's value plummets.
- The county has allowed people to live in the home for the last two years with highly treated effluent surfacing on the ground.
- I get a phone call and agree to help her.
- Following are my actions and research. I hope this helps others who may find themselves in similar situations.

# NPDES Program

## NPDES Program Authorizations (as of July 2019)



# Making the case, research and steps taken

- Listing out the details of a given situation helps outline the issues, offers a path forward, and creates solutions. Putting your thoughts down in writing creates a clear path to a solution. A position paper provides the path.
  
- We asked to work together.
- We provided background
- We defined the issues.
- We provided solutions.

# Define the issue that keeps a homeowner from a viable solution.

- Issue:
- A county ordinance the county says does not allow direct discharge.
- Through VDH regulation and federal permits, administered by DEQ for direct discharge solutions are lawful.
- Regarding rural water and septic, where municipal water and sewer do not exist, does the state, or county possess the power to regulate?

# **The Planning Development Department has used other county ordinances to deny a discharge system permit in Virginia.**

- Different responses were provided by different departments and contacts leading to unclear answers.
- 18A-21
- 18A-22



# Is Your State a Dillon's Rule State or a Home Rule State

- Dillon's Rule takes a narrow approach to local authority, essentially stating that local governments only have the powers expressly granted to them by the state. Home Rule gives local governments greater autonomy and limits the power of states to interfere in local affairs.
- Is your state a Dillon's rule state or a home rule state?
- Is your state a little of both?

# Researching the Counties primary service area or (PSA)

- PSA defines where public water, sewer, and "high levels" of other public services are received.
- Development outside of the PSA is strongly discouraged.
- Comprehensive Plan: Every city and county has one. Understand this plan and what it entails.
- All plans in James City County shall be subject to review under § 15.2-2232 of the code of Virginia.

# Researching area septic failure rates

Using the freedom of information act or (FOIA), we asked for and received a list of homes that have had repairs in the three neighborhoods affected.

Out of the 598 homes in this area of the county, 53 homes have pulled repair permits.

There are unconfirmed reports and anecdotal evidence repairs are being made without permits for fear of county repercussions.

# Virginia Health Department memoranda of agreement

Why is this important?

This agreement is for services to be provided by the James City County Health Department, and the funding is by and between the Virginia Department of Health and the James City County Board of Supervisors.

The agreement is created in satisfaction of the requirements of § 32.1-3 of the code of Virginia to operate the James City County Health Department.

# **In Virginia, there is an agreement between the state and the county as to powers to regulate. Known as the Charter**

Why is this important

The General Assembly hereby charters the County of James City, a political subdivision of the Commonwealth of Virginia, as a county within the Commonwealth of Virginia and, as such, shall have perpetual succession and all other powers and responsibilities granted by the charter or general law. (1993, cc 779,798)

# Regulations and State Code

- Why is this important?



§ 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of permits; inspections; civil penalties.

”In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and groundwater. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State Water Control Board, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the State Water Control Board.”

# Attorney General opines

In 2012 the honorable then-Senate member Martin asked for an advisory in accordance with § 2.2-505

Can a Virginia locality adopt and apply any ordinance, standard or other requirements to an alternative onsite sewage system that is more stringent than, in addition to, or otherwise exceeds the regulations, standards, and requirements of the Virginia Department of Health?

# Review

We have reviewed all documents we can find to understand if the county has the right or power to regulate a direct sewage discharge general permit.  
“DSD GP”

We reviewed the county ordinance 19-62, 18A-21 and 18A-22

We reviewed Dillion's rule vs. Home's rule

We reviewed the county public service access (PSA) policy

We reviewed the county's agreement with the Virginia Department of Health.

We reviewed the county's charter with the State.

We researched and found the area to have nine times the failure rate of the state overall.

We informed the House of Representatives Representative. and she is involved to help remedy this issue.



# We have to educate ourselves as best we can.

Know your regulations and state code.

Know the powers given to the county. Do they apply?

Know the consequences of not acting.

You will work with people at the county level outside of the Health Department who are not familiar with health or environmental regulations. You must not allow this to affect your reasonable and tactful approach.

Don't be mean but don't back down.

Don't doubt yourself. It is too easy to wonder if you are doing the right thing.

# Is a DSD GP a viable solution?

It depends

DSD GP is a viable permit where the SWCB (DEQ or DEP) decides the receiving waters are not adversely affected.

In some states, regulations may help decide a separation distance from one NPDES permit from another. Meaning if you reside in a neighborhood where mass failure can be confirmed, like the county I am working in, a neighbor can get a VPDES permit, but if your neighbor's system fails in the same manner, they cannot get one due to regulations.

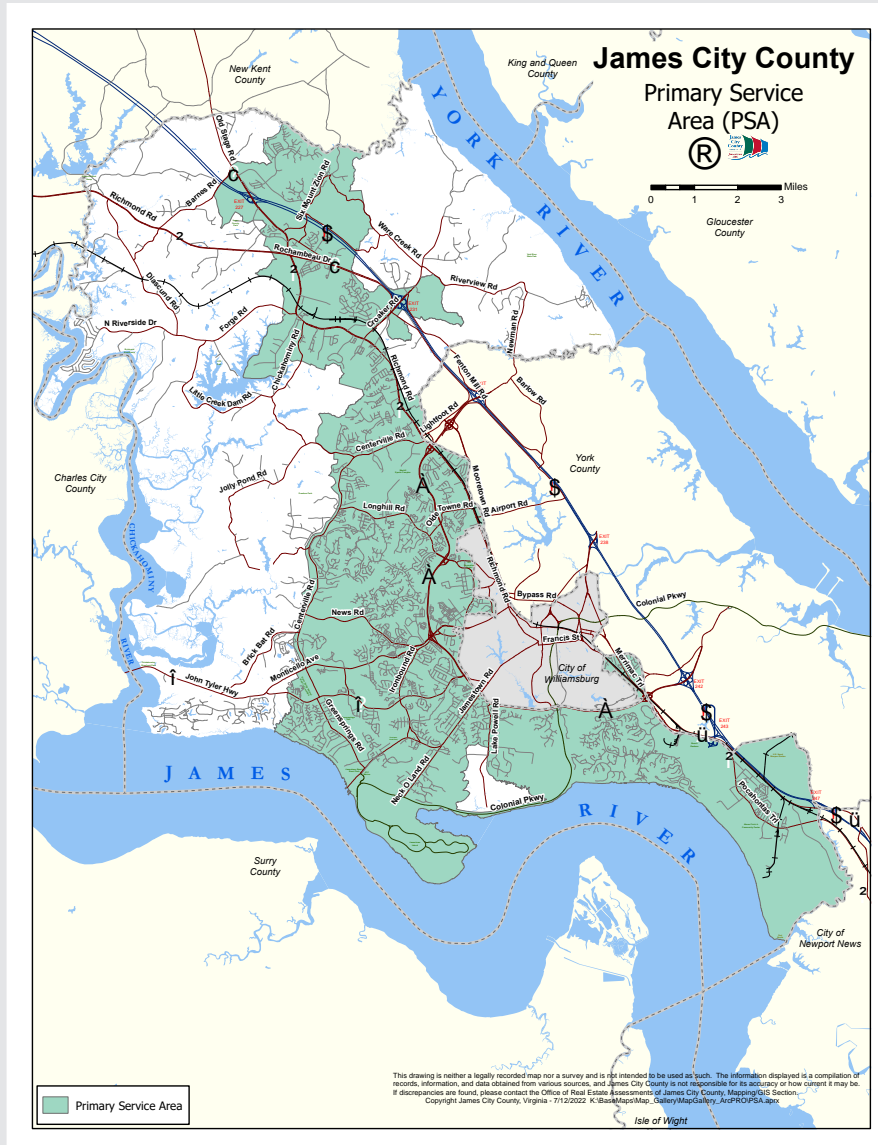
# Pump and haul, is this a viable solution or unfair hardship?

- One-time pumps outs – \$300.00 - \$500.00
- Pump and Haul contracts – \$200.00 – \$400.00
- According to my sources, a typical 4- bedroom home with four people = every 3-5 days.
- (365 / 3 = 122) (Average)
- (365 / 5 = 73) \$24,400.00 – \$48,800.00
- 122 \* \$200.00 = \$24,400.00 \$14,600.00 – \$36,500.00
- 73 \* \$200.00 = \$14,600.00
- 122 \* \$500.00 = \$48,800.00
- 73 \* \$500.00 = \$36,500.00

# Do we have a case for environmental injustice?

- Environmental justice is typically defined as **distributive justice**, which is *the equitable distribution of environmental risks and benefits*.
- Some definitions address **procedural justice**, which is *the fair and meaningful participation in decision-making*.
- Other scholars emphasize the **recognition of justice**, which is *the recognition of oppression and difference in environmental justice communities*.

# James City Counties Primary Service Area

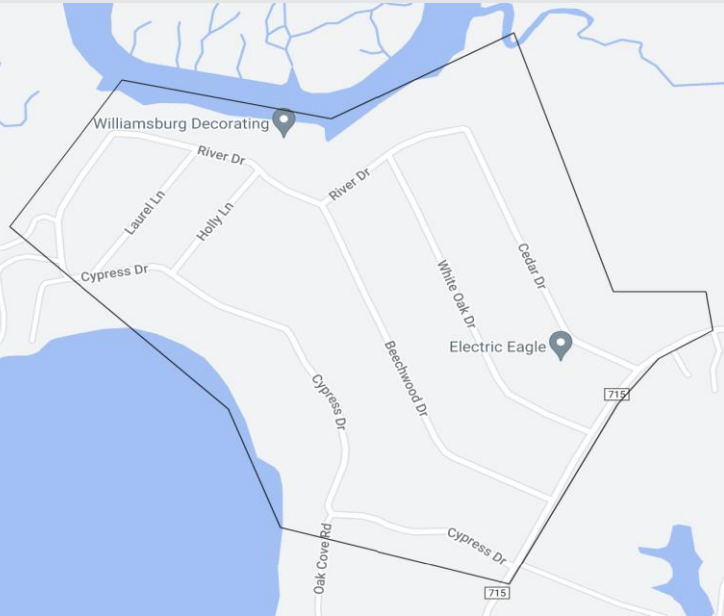




# Governors Land

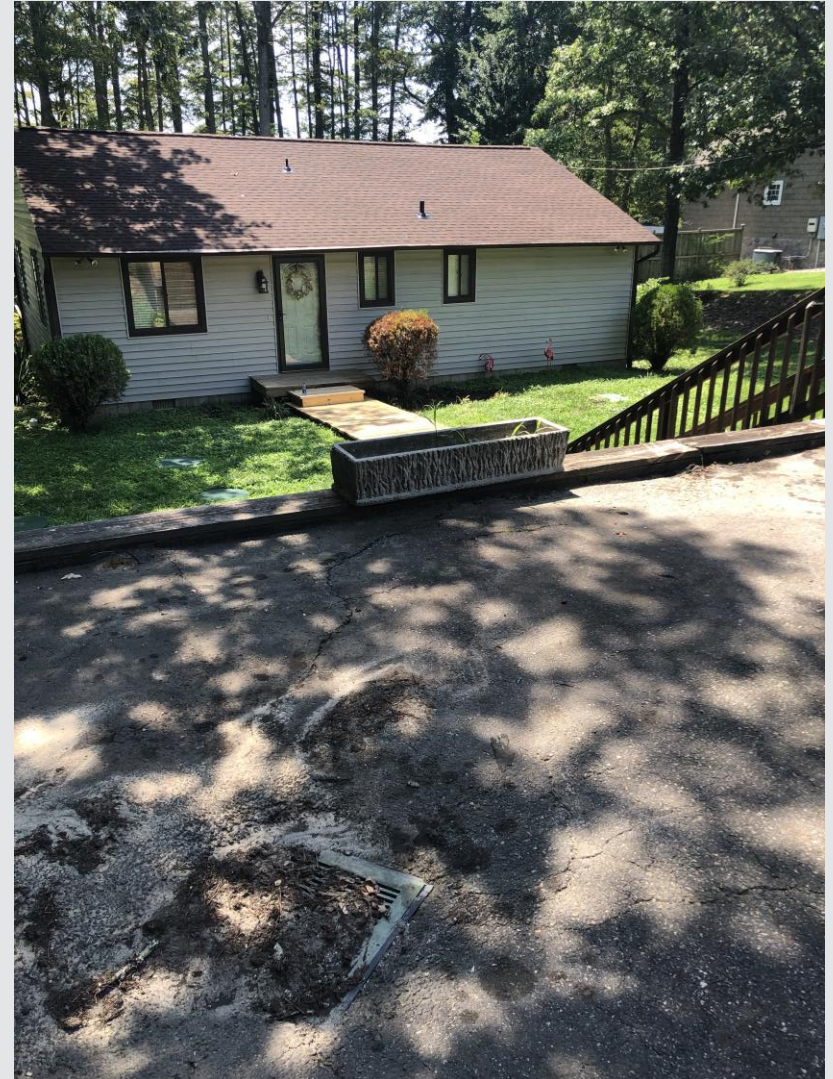


# Cypress Point





# 7657 Cypress Drive, Lanexa VA



# References

- References

- EPA, VDH, DEQ, and James City County web pages are referenced.
- <https://www.epa.gov/>
- <https://www.vdh.virginia.gov/>
- <https://www.jamescitycountyva.gov/>
- [https://www.loudoun.gov/DocumentCenter/View/120191/B\\_D-Stakeholders-Group-Comments\\_-Documents?bidId=](https://www.loudoun.gov/DocumentCenter/View/120191/B_D-Stakeholders-Group-Comments_-Documents?bidId=)

# *Solutions for Decentralized Wastewater Treatment*

Questions?

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