

**Virginia Department of Health (VDH)
Sewage Handling and Disposal Advisory Committee (SHADAC)
March 20, 2014 – Meeting Summary**

List of attendees at central location:

Advisory Committee Members

Jeff Walker	Mike Lynn	Robert Lee
James Hall	Dr. James Pyne	David Fridley
Curtis Moore	Dwayne Roadcap	Valerie Rourke
Ray Freeland		

VDH Staff and Guest

Lance Gregory	Rob Charnley	Jim Slusser
Bob Marshall	Cody Vigil	Mike Burch
Scott Currie	John Ewing	Jim Bowles
Erik Johnston	Eric Aschenbach	Dave Tiller
Todd Grubbs		

List of attendees at remote location:

Advisory Committee Members

Dr. John Galbraith

Administrative

1. Welcome.

Chairman Day was unable to attend. Mrs. Rourke volunteered to sit as acting chair. Mr. Walker sat in for Matt Tolley as the representative for the Virginia Association of Professional Soil Scientist (VAPSS).

2. Approve agenda.

There were no changes to the agenda.

3. Review and approve minutes from October 29, 2013 meetings.

Several comments were submitted on the draft summary. Mr. Gregory stated that he would make the necessary updates and submit the revised summary to SHADAC members for review.

Old Business

1. Update on the motion to create a policy regarding authority of local ordinances in light of Attorney General's opinion.

Mr. Roadcap commented on the agencies current policy and reiterated that VDH would not value judge local ordinances. If state rules are adhered, and local ordinance is not met, the procedure is to send a denial letter that asserts the state rules are met but not the local ordinance. The denial letter should provide the method to appeal the decision under local procedure. Ideally the denial would have a signature from a state employee and a county employee signature. However, this may not always be possible.

Mr. Pinnix commented that the intent of the SHADACs request was not for VDH to value judge local ordinances, and that the SHADAC requested to outline the administrative process. Mr. Pinnix voiced concern that in some cases no appeal process is provided.

Mr. Walker stated that he felt the issue dealt with VDH employees enforcing local ordinances.

Mrs. Rourke suggested drafting a formal request and submitting it to the agency for a response, to possibly facilitate further investigation.

Mr. Lee stated he did not believe that to be the role of the SHADAC. The SHADAC has advised the agency of the problem, and it's up to the agency how they respond to that issue.

Mrs. Rourke noted that the agency and the SHADAC may not always agree.

Mr. Walker commented that he believes it is possible for the committee to request an interpretation from the Office of the Attorney General (OAG).

Mr. Lee made a motion to advise VDH to draft written guidance regarding local ordinances and how they are handled in permitting by the agency.

Mr. Pinnix seconded the motion.

Mr. Moore commented that it seems the agency has a policy; the policy just needs to be put in writing.

Mr. Pinnix stated that he believes the process Mr. Roadcap described is reasonable, it just needs to be memorialized in writing.

All SHADAC members voted in favor of the motion.

2. SHIFT.

Mr. Roadcap informed the SHADAC that the final report for the Safety and Health in Facilitating a Transition (SHIFT) came out in January (the final report can be found at <http://www.vdh.virginia.gov/EnvironmentalHealth/Onsite/SHIFT/links.htm>). The final report has seven recommendations based on consensus of the SHIFT committee. During the SHIFT process, the agency announced it was going to move forward with standardizing work product expectations to the greatest extent possible, and that VDH would also try to develop a disclosures document. VDH has drafted print forms in the VENIS database system that mirror private sector forms, and VDH is currently working on the disclosures document. Danna Revis, Training Coordinator for the Office of Environmental Health Services (OEHS), is nearing completion of a training program for creating to-scale drawings. Hopefully, the training would be ready soon, and Ms. Revis might make it available to the private sector.

Mr. Roadcap also commented on House Bill 409, which was a request for the agency to reinstate some of the work that was done during the SHIFT. House Bill 409 was tabled, but VDH expects to receive a letter from the committee chairman to move forward on the recommendations from the SHIFT.

Mr. Pinnix asked Mr. Roadcap to elaborate on the agencies plans for standardization of work product.

Mr. Roadcap stated that the agency is working on standardizing forms, scale drawing, system/pump curves, and revisions to GMP 126.B.

Mr. Walker commented that onsite soil evaluators (OSE) complete designs under an exemption to engineering, and contractors should not modify specified products in those designs. He stated that the Health, Welfare and Institutions (HWI) committee discussed areas in which VDH is in completion with the private sector, and his expectation is that VDH would report to HWI on those areas.

Mr. Roadcap commented that VDH is duty bound to enforce the minimum standards of the regulations.

Mr. Walker stated that the Attorney General needs to look at where VDHs ministerial duty ends and the licensure requirements of VDH staff begin.

Mr. Lynn made a motion to move to the next agenda item.

Mr. Pinnix objected, stating there is a distinction between doing a ministerial duty as a VDH employee and completing a design under a DPOR license.

Mr. Moore voiced concern that contractors do not have design authority. If a contractor selects a pump for a VDH design, the contractor may select the pump based on economic circumstances. Mr. Moore added that VDH may not want to allow contractors to make that decision.

Mr. Roadcap stated that one of his goals is to bring any proposed changes forward to the SHADAC for comment before it goes into place.

3. Evaluation and design of private wells; request for industry improvements.

During the previous SHADAC meeting Larry Hall, a well driller in Virginia, brought forward concerns regarding the private well program. Mr. Gregory asked the SHADAC for assistance in addressing those concerns. Several SHADAC members agreed to participate in a small workgroup. Several meetings were held to discuss solutions to the following issues: standards for locating private wells, procedures for shifting well locations, the accuracy and precision of design drawings, and creation of a specific private well construction page that could be included in design packages.

Mr. Gregory stated that final recommendations of the workgroup are under review. He added that much of the discussion dealt with training needs and that workgroup members may provide joint training based on the final recommendations. Training could focus on the use of well areas versus well points, and the need for well drillers to obtain the entire permit package, among other topics.

Mrs. Rourke asked whether the workgroup's focus was on private or public wells.

Mr. Gregory stated the group only discussed private wells. Public wells are regulated by the Office of Drinking Water.

Mr. Walker asked for copies of the example drawings provided by Larry Hall at the previous SHADAC meeting. He also commented that Appendix L of the regulations includes recommendations for contour intervals and scale for drawings.

Mr. Pinnix asked for an explanation of the well permitting process and the obligations of the owner, well driller, and the designer during that process.

Mr. Gregory stated that for private sector designs with combined applications, the permit letter applies to both the onsite sewage system and the well. He added that the workgroup did discuss the need to clarify roles and expectations through the well permitting process.

Mr. Walker commented that the complete package must be given to well driller, and that the designer must work with the drillers to find a site that is water producing for the client to be satisfied.

Mr. Gregory commented that the Virginia Environmental Health Association, the Virginia Water Well Association, Home Builder Association of Virginia, and the Virginia Onsite Wastewater Recycling Association were represented on the workgroup. The workgroup will bring final recommendations forward to the SHADAC before moving forward.

Mr. Walker commented that the Virginia Association of Professional Soil Scientist is willing to participate in similar workgroups in the future.

4. Nitrogen BMP policy.

Mr. Gregory stated Guidance, Memorandum and Policy (GMP) 156 was issued on December 12, 2013. GMP 156 includes discussion regarding the use of nitrogen reduction Best Management Practices (BMPs) for small alternative onsite sewage systems (AOSS) and identifies multiple BMPs. Some modifications to the BMPs are pending; reduction in mound height, cover over shallow systems, and soil criteria. A testing protocol is being developed for treatment units based on the EPA BMP document and recommendations from a stakeholder group.

Mr. Pinnix commented that VDH is enforcing the nitrogen BMP policy as regulations. He voiced concern of a potential regulatory problem. Mr. Pinnix stated that authority to design onsite sewage systems comes from several different areas under the Code of Virginia, including the exemption to the practice of engineering. He stated he believes that nowhere in the Regulations for Alternative Onsite Sewage Systems (12VAC5-613, the AOSS Regulations) does it discuss designs under Va. Code Section 32.1-163.5; it only discusses designs under Va. Code Section 32.1-163.6. His understanding is that the nitrogen BMP policy discusses performance requirements, and that only a professional engineer (PE) can design under performance requirements contained in the AOSS Regulations.

5. Gravelless material policy.

Mr. Gregory provided an update on the emergency regulations for gravelless material and drip dispersal, and the process moving forward with final regulations. He stated that VDH must produce proposed regulations within 180 days following the end of the public comment period, which ended on February 26, 2014. Given the time needed for internal review and processing, OEHS would need to produce a draft proposal by early April. Mr. Gregory stated that he would like to have the SHADAC or the technical advisory committees (TACs) reconvene on April 3, 2014, to discuss the public comments and any possible revisions to the emergency regulations.

Mr. Walker recommended that TACs be reconvened.

Mrs. Rourke agreed that it would be best to use the TACs.

Mr. Walker asked for further explanation regarding the expiration of permits issued under the rescinded GMPs.

Mr. Gregory commented that designs under GMPs 127 and 135 are still valid as they comply with the emergency regulations. Substitutions in accordance with rescinded GMP 116 do not comply with the emergency regulations.

Mr. Walker voiced concern that GMP 135.A allows VDH staff to layout systems for certification letters that they could not design for a permit.

6. Peat disposal policy.

Mr. Gregory commented that an update to the peat disposal policy was sent to DEQ for concurrence. Once that occurs, the policy will be sent to VDH upper management for review. The draft policy reverses an earlier decision and identifies peat replacement as maintenance. The draft policy also requires that the activities associated with peat replacement be reported through the operation and maintenance website. The draft policy allows onsite disposal of spent peat under certain conditions, with a permit.

Mr. Walker asked when the policy would be finalized.

Mr. Roadcap stated that VDH is awaiting comments from DEQ before moving the policy forward through management review.

Mrs. Rourke commented that she would make sure DEQ is aware of the review request.

Mr. Moore asked whether there was a decision on the ability of VDH employees to perform site evaluation for onsite disposal.

Mr. Roadcap recommended that Mr. Moore contact Dr. Marcia Degen.

Mr. Walker asked whether onsite disposal would require a new application.

Mr. Moore stated that he believes the policy considers the application a repair.

Mr. Fridley asked whether the policy requires an inspection following the disposal activity.

Mr. Walker asked whether onsite disposal could be conducted within an onsite sewage system easement.

Mr. Moore commented that he believes the workgroup separated the removal and disposal of the peat. Removal was considered maintenance, but disposal was considered as a permitted activity. Additionally he believes the workgroup decided that the peat had to be disposed of on the property from which it was generated.

7. Direct dispersal policy and 12VAC5-613-90.D.1.b and 90.D.4.

Mr. Gregory provided the SHADAC a draft direct dispersal policy. He commented that the draft policy was sent to DEQ for comment, and has not gone through management review. VDH has received several variance requests regarding direct dispersal of effluent to groundwater for repairs and voluntary upgrades where the existing system results in direct dispersal of septic tank effluent. Designers and operators have commented that the requirements of 12VAC5-613-90.C are too costly, resulting in the variance request.

Mr. Walker asked if these request typically came from Eastern Virginia.

Mr. Roadcap confirmed that the requests were coming from Eastern Virginia where there are tens of thousand of properties that would fall within the policy. The initial thought was that

designers could build out of direct dispersal. However, VDH has found that is not always the case. Additionally, some owners choose to take a waiver, but that waiver does not apply to operational requirements. The policy is based on the Commissioners response to previous variance request.

Mr. Walker asked if the draft policy included any economic means test.

Mr. Roadcap stated that is not the case.

Mr. Walker asked whether there is any data on impacts to private wells when waivers are requested to allow septic tank effluent to be installed with direct dispersal.

Mr. Rourke commented that the Department of Environmental Quality (DEQ) is doing more to evaluate the states groundwater, but she does not believe they have concentrate much on the upper unconfined aquifer.

Mr. Walker commented that the policy makes since, and asked that VDH take into consideration that the designer is not allowed to pollute groundwater. Mr. Walker voiced concerned regarding possible environmental contamination.

Mrs. Rourke commented that she believes the draft policy should be modified to show that the policy is primarily applicable to the eastern part of the state where a direct discharge system is not available.

Mr. Fridley commented that the Code of Virginia allows owners to request a waiver from all treatment. He asked whether Mr. Walker is concerned that systems installed under such waivers may be putting the designer at risk.

Mr. Walker asked how the waiver process affects the general public even though the Code allows it.

Dr. Pyne voiced concern that the draft policy could create a number of potential conflicts.

New Business

1. Proposal to rescind GMP 122.

Mr. Grubbs commented that the policy is no longer necessary.

There were no comments from the SHADAC on rescinding GMP 122.

2. Revisions to GMP 155 – voluntary upgrades.

Mr. Tiller stated that VDH is proposing a revision to GMP 155 that would add a requirement for a site visit by a VDH employee. He asked the SHADAC for their thoughts on the proposal.

Mr. Lynn commented his understanding is that the private sector has to be involved in issuing a voluntary upgrade. He asked whether VDH ever gets involved.

Mr. Fridley commented that VDH is frequently involved where the systems is moving water slowly, and the owner asked VDH to make improvements such as adding new trenches.

Mr. Pinnix asked what happens if the existing system results in direct dispersal of septic tank effluent (STE). He stated that he believes direct dispersal of STE is a failure and requires a repair application. Additionally, if there is effluent above the normal level in the distribution box, it is a repair.

Mr. Lynn asked what the difference is between a modification permit, where the owner is increasing the capacity of the system, and a voluntary upgrade.

Mr. Pinnix asked what the benefits are provided by a voluntary upgrade. He added that VDH has a lot of latitude when issuing repair permits.

Mr. Tiller commented that the policy came about to resolve issues where a system is not backing up in the plumbing or on the ground surface, the owner wants to sell the home, but the inspector will not pass the system inspection. VDH could not invoke the repair clause if the system was not failing. Voluntary upgrades allow VDH to invoke the repair clause, and benefit the owner because the waiver is perpetual.

Mr. Pinnix commented his understanding is that statutory waivers are recorded with the land record, but a repair permit can be issued without the statutory waiver. He also voiced concern regarding the indemnity clauses in the voluntary upgrade release form, and recommend striking that language from the release.

Mr. Fridley reiterated Mr. Tiller's initial question; should VDH make a site visit. Mr. Fridley was in favor of the proposal.

Mr. Marshall commented on the need for accredited inspectors.

Mr. Moore commented that a voluntary upgrade cannot be used to increase the number of bedrooms. Additionally, someone has to make the determination that it reduces the threat to public health. Mr. Moore stated he believes it is the agencies responsibility to investigate the threat.

Mr. Lynn asked why an owner is required to hold VDH harmless just to do something that is in the regulations.

Mr. Walker voiced concern that some voluntary upgrades only involve adding an effluent filter.

Mr. Tiller commented that if VDH is going out on the site, the owner would describe the nature of the upgrade they are seeking.

Mr. Moore stated that VDH always has the ability to go out to the site, but to mandate that it is required may be unnecessary. He suggested asking the designer to specify why the owner is seeking the upgrade and swear on their license that it is not a repair.

Mr. Lee commented that there needs to be a distinction between adding a new component versus replacing an existing component.

Mr. Pinnix commented that his understanding is that the intent of voluntary upgrades is to allow improvements to existing systems that are not required.

Mr. Tiller reiterated his initial question, should VDH go out to the property. He stated the issue is the system may be failing, but the request is for a voluntary upgrade to receive a waiver that will transfer with the property.

Mr. Moore suggested that the applicant or designer state whether the system is failing.

Mr. Tiller stated that GMP 128 covers repair waivers while GMP 155 covers voluntary upgrade waivers. He noted that both waivers are covered in the same part of the code. He asked whether combining those policies (GMP 128 and GMP 155) would simplify the program.

Mr. Moore commented that having them in the same document might help to clarify the options.

Mr. Fridley commented that one waiver transfers and one does not. One waiver is for a failure, the other is for voluntary upgrades. Other than those differences the waivers are the same.

Mr. Moore voiced concern that some people may misconstrue the policy.

Mr. Walker suggested limiting voluntary upgrades to improving the quality of effluent.

Mrs. Rourke commented users of VDH guidance documents tend to appreciate fewer guidance documents, and recommended combining the policies.

Dr. Pyne voiced concern over the total number of policies and the ability of the average person to understand the program.

Mr. Pinnix suggested writing the policy for the target audience to cut down on the length of policy documents.

3. GPS policy.

Mr. Aschenbach provided the SHADAC with a copy of the draft GPS policy. He stated that VDH has received a lot of request internally, and from other agencies, to collect data points for

sewage systems and wells. This draft policy sets basic guidelines for what VDH would like to see when collecting this data. OEHS believes this data will be useful for planning purposes for VDH, as well as being beneficial for other departments and agencies.

Mr. Lee asked whether VDH is looking for the septic tank and drainfield.

Mrs. Rourke asked whether the policy is just for drinking water wells.

Mr. Bowles commented the policy is for private wells.

Mr. Walker asked how this data will be used.

Mr. Aschenbach stated that one use would be for providing data on the Chesapeake Bay Total Maximum Daily Load (TMDL).

Mr. Walker commented that he believes the data needs to be collected under the auspice of a surveyor, or include a disclosure document that the data was not collected surveyors.

Mr. Bowles and Mr. Aschenbach explained that OEHS wants to create the policy before districts purchased equipment.

Mr. Lynn asked whether the private sector is required to collect this data.

Mr. Bowles commented that one issue is that VDH can't control the level of accuracy provided by the private sector. While submission of that information is encouraged, VDH will need to do some form of verification on that data.

Mr. Marshall commented that VDH could get this data off the as-built if contractors provide the appropriate data.

Mrs. Rourke commented that VDH wouldn't need to question the quality of the information from the private sector if a specific standard is set.

Mr. Bowles stated that the policy will be sent out for comment, but OEHS needs comments back quickly.

4. Regulations Development and Next Steps

a. AOSE Regulations – 12VAC5-615

Mr. Roadcap commented that VDH received a number of comments on the proposal to rescind the AOSE Regulations. The agency does not have authority to administer these regulations, and will moving forward with the process.

b. Discharge System Regulations – 12VAC5-640

Mr. Roadcap stated that OEHS is trying to get on the Board of Health's June meeting schedule to discuss final adoption of the amend regulations.

c. Fee Regulations – 12VAC5-620

Mr. Bowles stated that VDH received several comments during the latest public comment period. OEHS is working on addressing those comments as part of the final adoption process.

d. Emergency Regulations for Gravelless Material and Drip Dispersal – 12VAC5-610

Covered under previous discussion.

e. Civil Penalty Regulations – 12VAC5-650

Mr. Roadcap commented that the agency is in the process of determining how to implement the Civil Penalty Regulations.

Mr. Walker commented that the AOSE Regulations should be carried over to policy or other regulations.

Mr. Pinnix moved to adjourn.

Mrs. Rourke seconded the motion.

Adjourn

Appendix A
Virginia Department of Health
Sewage Handling and Disposal Advisory Committee Meeting
Agenda

Date: March 20, 2014

Time: 10 am to 2 pm

Location: 5th Floor, Main Conference Room
James Madison Building
109 Governor's Street
Richmond, Virginia 23219

Administrative (20 minutes)

1. Welcome. (5 minutes)
2. Approve agenda. (5 minutes)
3. Review and approve minutes from October 29, 2013 meetings. (10 minutes)

Old Business (30 minutes)

1. Update on the motion to create a policy regarding authority of local ordinances in light of Attorney General's opinion. (5 minutes / Roadcap)
2. SHIFT. (15 minutes / Roadcap and Gregory)
 - a. Final report recommendations.
 - b. VDH process to implement consensus recommendation.
3. Evaluation and design of private wells; request for industry improvements. (10 minutes / Gregory)
4. Nitrogen BMP policy (10 minutes / Roadcap)

Break (10 minutes)

Resume Old Business (30 minutes)

5. Gravelless material policy. (10 minutes / Gregory)
6. Peat disposal policy. (10 minutes / Gregory)
7. Direct dispersal policy and 12VAC5-613-90.D.1.b and 90.D.4. (10 minutes / Gregory)

New Business (30 minutes)

1. Proposal to rescind GMP 122. (10 minutes / Grubbs)
2. GPS policy. (10 minutes / Bowles and Aschenbach)
3. Revisions to GMP 155 – voluntary upgrades. (10 minutes / Tiller)

Break (30 minutes)

Resume New Business (50 minutes)

4. Regulations Development and Next Steps (50 minutes)
 - f. AOSE Regulations – 12VAC5-615 (10 minutes / Roadcap)
 - g. Discharge System Regulations – 12VAC5-640 (10 minutes / Roadcap)
 - h. Fee Regulations – 12VAC5-620 (10 minutes / Bowles)
 - i. Emergency Regulations for Gravelless Material and Drip Dispersal – 12VAC5-610 (10 minutes / Gregory)
 - j. Civil Penalty Regulations – 12VAC5-650 (10 minutes / Bolling)

Break (5 minutes)

5. Construction permits for long-term development – phased construction (15 minutes / Bolling)
6. Minimum expectations regarding site evaluations for component replacements. (15 minutes / Roadcap)
7. Legislative update and other upcoming items for OEHS. (5 minutes)
 - a. Bills from 2014 General Assembly Session. (Roadcap)
 - b. SHADAC appointments. (Gregory)
 - c. GMP 52.A revision. (Gregory)
 - d. Well abandonment setback policy. (Gregory)
 - e. GMP 147 field testing of past approvals. (Roadcap)
 - f. Ksat Manual. (Conta)
 - g. Cr project. (Conta)
 - h. Safe, Adequate and Proper policy. (Bolling)

Adjourn