

Sewage Handling and Disposal Advisory Committee

April 23, 2010

Draft Meeting Minutes

Attendance:

<u>Member Attendees</u>	<u>Non-Member Attendees</u>
Todd Benson	Dwayne Roadcap
Bob Lee	Marcia Degen
Valarie Rourke	Patrick Bolling
Barrett Hardiman	Bob Mayer
John Harper	Anish Jantrania
Joel Pinnix (half day attendance)	Duke Price
Mike Lynn	Scott Currie
V'lent Lassiter	
Bill Keeling	
Rob Wadsworth	
Bill Timmons	
Vincent Day	

See Appendix 1 for a copy of the Draft Agenda.

Agenda, additions or changes, none offered, accept motion to approve, agenda approved.

Copy of 3/19/10 minutes, look through them, need to add Todd and John Harper to the minutes. Any other changes? Motion to approve, moved, approved.

New Business:

Workgroup #1 reported, no conflicts reported in relation to the Ches. Bay Act.

Colin chaired one group on Parts III and IV

Jim Pyne chaired one group on O&M. Bob Lee said that he could provide comments. Under O&M, item C, where each operator must keep a log, will that be acceptable and available through VENIS? A lot of people don't have easy way to keep paper records onsite. Is there a different option?

Item D. Operator is responsible for entire AOSS, what is meant by responsible? If he is not the original designer, he is not necessarily responsible?

613.140, Item A, indicated AOSS with 40,000 GPD must be manned in accordance with Table 1, recommended that we delete minimum frequencies, and add “as approved in the O&M manual.” Under the same item C, I have a comment, why make these rules more stringent than big plant treatment plants? Distributed wastewater management is designed to reduce manpower through technology. There is room to do some things that won’t put people in a box on the required number of man hours.

613-150, O&M manual, under item B, prior to issuance, designer must submit comments of a draft O&M manual for approval, I added “draft” and “for approval.” If they are submitted, they ought to be approved, Department may issue temporary OP, not to exceed 180 days, I think the Department should be allowed to issue temporary OP pending approval of the O&M manual. We needed the word “approval” in there.

613-160, mandatory visits, inspect all components of AOSS, conduct field test, or action deemed necessary by the operator, I thought it should say entire treatment works, it makes up the entire onsite sewage system, it is a language change. Item B, make adjustments, replace with in-kind parts, I made a comment that we routinely replace components with improved components, which happens all the time, it may not be “in kind” but could be more robust. The “in-kind” part, what does that cover? If it serves same function, is that ok? That was Jim Pyne’s comments.

The revenue for \$1 per report, it’s not worth it. Will HD accept reports without fee? May need a change to the code.

All maintenance reports submitted, we don’t require this for large systems, items could be done on a simple form, under Section E, name of lab, how will lab certifications be handled? How will people know whether a lab loses its certification? I received this from Jim.

Work assignments came up before adoption of the regulations. What’s the purpose of this discussion? Help the department on final regulations. We need to make sure our suggestions can be followed up. One year time and the deadlines are short. Implementation guidelines being drafted and the committee’s advice could be used for implementation.

Now that emergency regulation is published, there are some new and different questions.

Ok, let’s revisit the subcommittee’s thoughts. First comment was about availability of logs online? VDH is not looking at that right now. Everything is possible, some things are less likely. Private sector people are probably not going to be able to directly enter into their information database, we might be able to import some information. There are hundreds of details VDH is trying to work out. If the log can be available and accessible by private party, Carmody or Online RME, then would that be ok?

Knapp: We are collecting questions and we will track this. Section 613-100, the log must be onsite, that is the regulatory requirement.

Other comments by members of the advisory committee: I would question the need for a log on any system less than 1,000 gpd. We are talking about one annual site visit and some repair stuff. I would say the same thing about requiring the O&M manual on site.

I would disagree, we are turning over O&M to the private sector, the log lets VDH and the rest of us know that the system is working, I'm not saying that you don't need to keep a log, I'm saying that the log will be maintained and kept at the health department. They will receive the reports. I don't think the log should be maintained by the contractor, he could go out of business. Reportable incidents, all of that has to be reported, that's not in a log at a wastewater treatment plant, the DMR is at DEQ. But that has nothing to do with maintenance, that log is only about discharging limits, the log is only there in case DEQ visits. Where will the log be housed?

Log is different. No matter what we report, for residential systems, why must it be onsite? Can't it be housed somewhere else? It will increase costs for homeowner to maintain log onsite. If you are onsite and there is a log there, won't that be helpful? Otherwise, someone has to go find the log. Operator won't have to go health dept. I don't want it kept onsite because it could get lost.

One thing we are looking at with VENIS, is it sufficient to record the link to another collecting system? Any system I maintain, you can access it with a blackberry. Until we try it, we won't know how it will work. If all we have is a link to Mike's account to Carmody, then that's great unless he goes out of business or doesn't pay his Carmody bill. Operationally, the link on VDH's website should work if it is linked to a private account through Carmody.

Where would HD like to keep the log? I don't know, the rule says there must be a log and it must be onsite. That means that there is something on site. This is a big program, regulations just took effect, there are thousands of details, we won't get it right just starting out. I appreciate the feedback, I'm interested in what the group thinks.

Maybe this is the way to handle: for larger systems, maintain on site, for smaller systems, maintain at health department. Most owners don't keep track of this. For larger systems, maintaining log onsite would be important. There are problems with consistency of homeowners and how much they understand.

Does VDH have the capability for online log? You could say the reports must be made available upon request of VDH. That would leave the option open on where the best place to keep the log would be. For Loudoun, we don't want paper, whatever the answer is. We are eliminating all the paper, additional paper should not be part of the answer.

Everyone is using the internet, online access should not be that difficult.

Next topic: Part D. What does it mean to be responsible? Designer, operator, contractor, user all have roles. How would operator be responsible if owner is dumping oil down the sink every day? I agree with that. There needs to be responsibility for the system. Owner doesn't have to use the system the way it was designed. There is no responsibility for that. Somebody has to be charged with using and operating the system. The owner is ultimately responsible. Yes, but that liability is not established in these regulations. You have to look somewhere else. No where does this regulation say that the owner must use the system in accordance with the design. The regulation should be clear on this topic. Operators should not get into trouble for the owner's irresponsibility.

Perhaps this could be addressed in the contract between the owner and operator. If there is a significant problem, then it won't come back on the operator on enforcement action. What are the minimum things in the contract to protect the operator? The contract is off the table as far as VDH is concerned. VDH has resisted the contract concept. You can put the essential elements in the regulations, then somebody walks in with a contract with additional requirements, health department looks at the contract and thinks that some of these new elements in the contract negate required regulation, then you are debating about what the contract says, VDH does not want to evaluate contracts. It makes it more difficult for owners to be responsible. The contract would make the owner more aware of the requirements. The question becomes whether the contract is legally binding and required by regulation.

Who gets the NOV? The owner would get the NOV. Owner gets the permit. Owner is responsible, end of subject. This is a permit for operation.

Todd has an interesting argument. He's saying that because of the way our language is written in code and regulation, and the way permits are entered, we issue permits to pollute. You allow N, P, BOD, TSS, they are all pollutants, you are saying these are the acceptable allowances, the regulations should say the owner is responsible for operating the system in accordance with the regulations. The regulation seems to already address it. At worst, it would be redundant so just include it. If added to the owner's responsibility, then it would make it clear that owner is obligated to operating or using the system in accordance with the system.

VDH had recent meeting on implementation, one way to do this is to issue an AOSS operation permit that has the requirements of the new rule. It sets the rules to the operation permit. That would take work and trade-off with resources. It could address some of the issues about the owner's part to the operation of the system.

I'm all for educating the owner, do's and don'ts, when you include that kind of language, the reason the owner hires an operator, he does it because he doesn't know that system, operator is supposed to know how to operate the system, if issue is about the owner's disposal practices, then owner should be informed by the operator, but to make owner responsible for telling operator that he is not doing his job properly, that won't work. There are plenty of

rules to go after the operator and owner, depending on the facts. Operator has responsibility to owner.

Owner is prohibited from operating his system; he must establish a relationship with an operator. If the owner not responsible, then operator must be. The owner is already responsible. Our purpose through regulation is to clarify this issue so court can be avoided. The regulation should not be written to have the courts work out the problems.

If you are saying the owner is responsible, then that's problematic because owner can't operate his system by code. The owner has liability to health department, owner has liability to operator. For comparison, discharging systems, the owner holds the operating permit, you see a lot of contractual obligations between operator and owner. Owner is ultimately responsible.

There are a multitude of owners, churches, associations, etc., the owner's responsibilities are clearly outlined in the regulations. If they hire bad operator, they will take civil action and move on.

Next Topic: 613-140.A, "or as required by the O&M manual." Minimum frequencies are established; presumably the O&M manual would have more requirements, not less than what is required by the regulations. This is about how many hours the operator must be there per day. You can deviate from those requirements with justification.

Table 1 deals with trench bottoms, I think we were talking about sampling and monitoring requirements. Should we have an O&M manual that is enforceable? Systems are bigger than 40,000 gpd. Why don't we make it enforceable? Is the suggestion to follow the SCAT regulations or some other schedule provided by the O&M manual? The table in the SCAT regulations talks about manning 8-12 hours per day, based on technology 20 years ago, technology has improved, we can deviate with justification. Combine this with Section 140.C or D, then VDH can reduce the requirements for manned hours at the plant.

Should we change "may not" to "may" to allow for new technology?

Next Topic: 613-150.B, submit draft of the O&M manual, the O&M manual must be approved by VDH before the final OP is issued. Is the Department in the business of approving O&M manuals or just collecting them? The suggestion is that they review and approve. Does VDH have the manpower? The small systems will be packaged. On the larger systems, we will need to review.

Section 150.B, the owner shall have the designer submit O&M manual? Why can't operator develop an O&M manual? What if the operator finds that the designer's O&M manual is not adequate? These are sophisticated systems and you can't just have the operator develop the O&M manual. Some systems are not complicated.

Part of the issue, how does this requirement apply to existing systems? How do we look at the existing systems? This system doesn't have an O&M manual and health department has never had a copy of it; now what are we going to do? Operator could develop one.

We have cross over area: who's responsible for what? Should operator be allowed to change the operation to accomplish the designer's goal or performance a different way? When does operational change become design change? Perhaps you need a new paragraph, maybe say that for systems prior to adoption of the regulation, then lay out the requirements for existing systems that never had an O&M manual. You don't have any performance testing requirements on existing systems, you are just saying, owner, go hire someone to trouble shoot any obvious problems, there is no sampling for compliance. Yes there is.

I would ask the Dept to look at this issue. This regulation will live for less than a year. We can't get hung up on the details. I thought we were supposed to be looking at the details to improve the permanent regulation. Ok, two issues, what do we do today and next, what should we do for moving forward with the permanent regulation?

Theoretically, the emergency regulation takes care of all alternative systems. There will always be a category of systems subject to certain parts of the regulations. For existing systems, we may want the operator to put an O&M manual together. If you look at HB1166 systems, then they deviate from the regulations. Everything else has been done under prescriptive rules with existing O&M manuals. Drip O&M manual is the same, except for HB1166 systems.

Next Topic: 613-160. Inspect the entire "treatment works."

Are there things that could not be inspected? Treatment works is defined in the code. Treatment system is a treatment works. We need uniformity, match Section 160 with the definition section.

Next Topic: improved or in-kind parts, I think people are ok with improved parts, I don't think "in-kind" prevents that action. How is in-kind interpreted? If it is defined to meet the performance, then there is not an issue. Comments were about reliability. Other places interpret that differently. That phrase (in-kind) comes from the definition of maintenance. We could potentially define "in-kind" in the follow-up rule to clarify. What about "functionally equivalent or better." Have to be careful. You want a certain band of performance; same pumps with same horsepower could have different performance. It is not desirable or possible to anticipate all of the possibilities. Some things just have to get worked out.

Next Topic: 613-170, question about the \$1 fee, can only offer a change in code. VDH doesn't usually make those requests.

Next Topic: How will lab certifications be handled? I think an operator and owner could file a report that they thought was valid but then they find out the lab lost its certification. Operator has to be sure that they use a certified lab.

Maintenance and adjustments, we don't write down all of this for large plants, we are also not testing all of these small plants. We may want to let this ride and see what happens. If tank is pumped, and it is reported, that will not be sufficient to meet the annual site visit. Same discussion as the law in a lot of ways, this is essentially a requirement that we don't have in the larger systems.

For Part III, Does anybody have anything that they would like to bring up to the group?

I'm not sure, as an operator, it's not clear what the operator's responsibility is to report data. VDH should determine compliance or non-compliance, not the operator. If the report was not flagged by the operator for non-compliance, then VDH will not look at the good reports. Operator is not required to make a value-judgment. Under Section 170, under reports, there is a requirement for a summary statement by the operator indicating whether it is functioning properly. What is function? There are performance standards. I would assume that function means performance requirements. I liked some of the classifications in the implementation manual. There were 5 classes. It goes back to the Puraflo email, what if there is ponding on top of the peat, but no sewage is on top of ground, and it's not contaminating the groundwater, and I don't have to take a sample. So, does the system meet the performance requirements? How do you know whether it is meeting the performance requirements? Is it functioning as designed? The O&M manual does not talk about ponding on the peat. The manufacturer should provide you with the information.

I'm not comfortable as an operator branding something as a failure until the health department says it's a failure. It's VDH's job to determine compliance with the regulations, not the operator's job. The operator must report whether the system is working properly and that the owner is required to do something. What level of certainty in the regulations do operators need?

Ok, let's say Puraflo says to rough the peat and observe whenever you find ponding. Then the operator would have provided the maintenance in accordance with the manufacturer's expectation. Is the performance defined by the regulations prior to the emergency regulations or is the performance required by the emergency regulations (pre-reg or post-reg)? The performance requirement pre-reg was backing up into the house or on top of the ground. So, ponding on the peat meets that definition of performance, it's meeting that performance.

Where is the authority to correct? If the system is not operating as designed, then you must correct. Ok, then the operator needs that assurance. I don't want the owner complaining to the health department, and the health department tells the owner that the performance is measured by the pre-reg performance requirements. So, now the owner comes back to the

operator and says that VDH does not require performance of your system to the emergency regulation, your system was installed prior to the emergency regulations so you are ok. I'm talking about the 60,000 alternative systems that have been installed pre-emergency regulation that we have to inspect and report on. What are the enforceable performance requirements for the existing systems installed prior to the E-regs?

If operators are not comfortable with language in Section 170 about operation, could it say that the operator must refer this issue to VDH for determination? If operator sees issue, then he could refer it to VDH about the regulatory compliance issue. I need to know as an operator what the performance expectation is for the existing systems. If I'm an owner and I have operator that says I must take action, then owner might get a second opinion, which happens to be different, then ok, that owner now works with a different operator.

Is it analogous to the responsibility of the owner, operator? If you find contamination by LUST, the operator does not conclude there is a violation. They refer to state who determines compliance.

For property transfer of an older system: if VDH gets application for walk-over in Loudoun County, then would that system be flagged for relationship with an operator, will it be selected out because it is being sold? Here's a system that hasn't been operator maintained in 5-years, operator finds it is in horrible condition but not backing up in house or coming on to ground surface, what should operator do? What's the performance requirements?

Let's set stage: problem that exists today. Let's leave HD out, installers will go out uncover septic tank and d-box, if they see something they are not comfortable with, d-box full, then they refuse to sign off on the inspection. All being done by private parties. The owner will apply for a repair permit, the HD looks at it and says there is no failure, no back-up, no sewage on ground surface, no reason to issue a repair permit. Now, private contractor standing there with different story. This is a problem. Mike is taking the same problem and extending to AOSS, we have different yardstick now. Your performance requirements are the same, but is it functioning as designed? We are supposed to know how systems are to work? There is never a black/white issue. That's what you get paid to do as an operator.

Comment: sampling and testing, reporting of samples, licensed operators pulls grab sample, few days later the test results are reported, at some point he has to say whether the system is working in accordance with TL-2 or TL-3. I suspect there will be a lot of missed sampling results. Has the HD considered how to handle that situation?

VDH hasn't offered a rubric or protocol on when to take enforcement action. Sampling once every five years to look at population data, look at systems in aggregate to evaluate the performance in aggregate. Grab sample is a snapshot. VDH has to be reasonable and prudent with its enforcement action. There will be variability with sampling and we have methods for dealing with the variability. Where do you draw the line? Is 56 BOD ok? Is 102 BOD ok?, where is the number where you say something?

What if you take a sample at 180 days and it's 300 mg/l? What do you do? Maybe VDH will one day have a highly developed enforcement manual. What if the blower is off? Somebody will look at it.

Following lunch break, group discussed Colin Bishop's subgroup, Parts II and IV criteria: He's not here. Mike Lynn followed up. We met frequently and had some vigorous conversations at times. What we achieved consensus on is the following:

1. No changes to horizontal setbacks.
2. 613-80 and 90 would fit better under O&M
3. Operated on premise that all recommendations to Part II will apply to only PE designs. We still see a need to split of what an AOSE does or an AOSE in consultation with a PE does for things that fit under the current regs, or current regs plus GMPs. Title 32.1-163.6 should be a separate rule.
4. Part II performance should be divided into two sections, PEs and AOSEs
5. All designs by PEs should be reviewed by PEs. Lots of problems with EHSes reviewing PE plans. It often leads to administrative denial because they don't understand something and want more information. Everything is there in the design plans but the EHSes want clarification on something and use the administrative denial improperly. Another piece of paper won't make it (the design) comply better; now it's about whether you need more information because you, as the EHS, don't understand.
6. Tables need to address gravity and pressure dosing. The numbers in regs are based on pressure dosing, it's confusing a lot of people.
7. If designer uses something other than Table 1, then we need an appropriate standard—ANSI or whatever
8. Table 2 modification, vertical separation, VDH has some experience, we would like to change to read less than 12 inches to 6-inches and you always need a minimum of 6-inches of naturally occurring soil. Designer to add language to describe what he is doing.---we did not reach consensus on this issue. There wasn't an opportunity for consensus.

With regard to horizontal setbacks, I find that confusing, are the setbacks in the code? No, so you are referring to setbacks to shellfish and other setbacks in the sewage handling and disposal regulations. You should have a reference to the other regulations. I didn't know where those setbacks were.

With regard to second suggestion, Section 80 and 90 would fit better under Part III. Part III is subject to Part II and IV, then you would need clarification for the exemptions.

With regard to third suggestion and fourth: things that are manufactured, should they have their own testing and performance standard? What was the workgroup's intent with the recommendation? Why would we not have the non-163.6 systems not subject to the performance requirements? It's confusing, "all designs submitted under this section shall

have the PE seal.” It’s a point of confusion and leads people to think that they only apply to 163.6 designs. How do you submit application as an AOSE under the Emergency Regs given the flow chart in the implementation manual? We can fix the flowchart. With the way it is written, I understand clarification needed. In the NOIRA and code, the two basic requirements were to identify minimum performance standards for 1166 systems and O&M for all systems. It didn’t ask us for rules for non-1166 systems. I have different recollection, I thought it said to adopt regs to establish performance req. for alternative systems. There was no difference between who designed the system. The regs are confusing for somebody to understand who can do what. You almost have to rescind all of the GMPs that deal with AOSS if the e-regs apply to all systems. Those designs now come under these regs. Presumably where there is a conflict between GMP and reg, then the reg would apply. I don’t think there are a lot of conflicts between GMPs and regs, or at least as many as people think. Performance requirements for emergency regs work for 163.6 systems. I just want to know what to do. Tell me. I happen to think that we could keep at least one of those GMPs because it is not necessarily in conflict with the reg. PEs could design according to GMP.

Are you referring to specific GMP? Yes, GMP #147, which used to be a group of GMPs. You could throw in GMP #107 too. Why are they needed, except for non-engineering designs?

So, did the sub-group want separate performance requirements based on who designed the alternative system, PE or OSE? At one point, there was a description of what was performance, the E-regs show prescription for performance. Some wanted to remove the prescriptive requirements that had a performance label. The whole business on sampling, and moving it to the O&M, if you did that, then you could address existing systems and sampling requirements that should remain. What if existing permits have sampling requirements that are more rigorous than what the e-regs require? We could differentiate these systems out too.

#5, Peer to Peer Review: Another question for VDH and its manpower. I’m surprised PEs want a peer to peer review. If VDH approves one under HB1166, then it can only be done by PE? What if there is a discrepancy between between PE and the E-regs? The only ones getting reviewed by PEs are the denials. Is the administrative denial the problem? You don’t fall into the peer to peer review unless you submit under 163.6. If you submit as PE under the prescriptive part, staff are not required to run it through the engineering staff unless it is going to be a denial. PEs want a review without having the administrative review. Why have VDH offer peer-to-peer review if the EHS is going to approve it?

If the problem is administrative denial, then that is a separate issue. VDH has time constraints on processing, must issue or deny within a certain period of time, administrative denial was to quickly identify missing information, not a case decision, normally would not be appealed, if you look at the application and you see that it is not in accordance with the regulation, then that’s a denial. Over time, it has crept and the time constraints are still there, it’s a bit of a crutch in the field and is used for more substantive issues. That is different

issue than peer-to-peer review or what goes to the engineering review panel. Maybe Colin can shed some light on this sub-group discussion. We can discuss this at the next meeting.

#6, Pressure and gravity dosing, no comments

#7, Using something other than Table 1, looks like a good suggestion, one complaint from engineering community is that the performance requirements look like prescriptive limitations, in the reg, in its final version, could say, here's Table 1, if you use something else, then it has to come from somewhere else. Need another state's formula or whatever. Some wanted nothing. Some object to table. Some of these issues are difficult to grasp, this issue got a lot of discussion, if you are going to ask for no prescriptions, then I wonder about GMP #101, mass drainfield, which is a site characterization report, what are engineers required to do? What is standard engineering practice? Shouldn't standard engineering practice be something that has been routinely done somewhere, it's not the first try at this design? There's a model for doing a site characterization. GMP 101 is a policy, not a regulation. E-reg has some minimum site characterizations, are they satisfactory and is GMP #101 needed? The reason for this: If you are operating under sewage handling and disposal regs, in conjunction with E-regs, then the policy serves a purpose. So, now, what to do with those designs that don't have to follow the sewage handling and disposal regulations? Well, the e-regs capture that you need at least this minimum information.

On the subject of putting prescriptive requirements and calling them performance: the e-regs are supplemental to the sewage regs, in the sewage regs, you have a process for variances, people could request variances, whether prescriptive or not, that gives you a lot flexibility. You could apply for variance to the loading rates in lieu of applying under Title 32.1-163.6. DEQ does not have authority for variances and that is a real problem. That's a good point. You wouldn't want every problem solved by variances though. If you can't meet all of the requirements for repair, you have options.

#8, last comment, if you site with less than 6-inches to watertable, you must describe what you are doing? Is that what you were discussing? Designs under 32.1-163.6, 0-inch water tables, is it at the ground surface; or is it 2-inches above the ground surface? Trying to build on that site is difficult. For less than 6-inches to the watertable, a more detailed site characterization is necessary. Water should not be ponding on the ground surface during parts of the year. Wetlands are a very sticky issue. These are taking up 90% of the time for VDH.

Why wouldn't this be considered a point source discharge? You need a permit for point source discharges. A wetland is considered a surface water of the state. You could have watertable above and below, it could still be a wetland with no surface water. A wetland would require a VPDES permit according to DEQ. If the system is discharging less than 6-inches to the surface, then I think DEQ would or might consider that site to be a wetland requiring a VPDES permit. Very strict, traditional delineation, you use redox features, hydrology, plants, and soil. Point source discharge would normally require a permit from

DEQ. Is this an alternative system or a discharging system? Is it a disguised direct point discharge that requires a permit from DEQ?

DEQ issues permits for single family homes when they discharge, we have general permit. This is a gray area, where do we draw the line to an acceptable depth to the watertable? Should it be regulated by DEQ? The clean water act does not give you discretion. Clean Water Act requires designs in wetlands to be discharge systems. Probably any sight with watertable less than 6-inches to the surface should require VPDES permit. Is it a point source discharge if effluent is discharged below the ground surface? When there is a direct discharge into a watertable at or near the surface, or a wetland, it could be considered a surface water of the state.

If you put certain types of dispersal systems into a wetland, when it was not wet, then you would never know whether that water had any effect on the wetland. If it is a discharge of a pollutant, then it falls under the Clean Water Act. We're here because we used to have a 12-inch separation to the watertable, it's now an issue. It may be that we need wetland delineation but VDH does not have the authority to require wetland delineation.

Sounds like we need some deeper discussions between VDH and DEQ. VDH does not have statutory authority to require applicant to do wetland study. Some wet sites are not wetlands too. Engineer is supposed to use standard engineering practice.

If you start a discussion with DEQ, then you should discuss this: general permit to repair failing onsite sewage system, someone has to find that you can't install another sewage system. Right now, someone comes to health department (HD) to put in onsite system, HD says no, and then that owner comes to DEQ for discharging permit, in the regulation, the owner must demonstrate that they went to HD, because HD can't design AOSS, they deny for conventional, but an AOSS could be installed, but a PE can do whatever he wants under 32.1-163.6. Do they stop at HD, with the AOSE, or with the PE? What is DEQ's threshold for issuing a permit?

When it comes to wetlands, there is a jurisdictional issue. DEQ may have authority.

New Topic: Under Section 70, #11, a couple things in the paragraph, after passed through soil and treatment area, fecal cannot exceed 200 cfu/100ml. How is this standard going to be monitored and verified? If it's there, then you need to be more explicit whether it is to be monitored and how it can be calculated? When disinfection required, that phrase is nebulous, what are the circumstances for disinfection? Table 2, for TL-3 and disinfection. That needs clarification. We talked about Table 2 already.

Under Section 80.B, all effluent samples after all treatment, but before soil, how do you sample for fecal? Does subdivision 70.A#11 say it can't exceed 200 cfu/100 ml and project area? If disinfection required, can't exceed 200 cfu. Would that take care of Section 80 concerns? If you take it out and put septic into a mound and show that fecals are removed,

you would be prevented from doing that. Is that correct? It's effective disinfection coming out of pipe. What if your treatment is your dispersal?

Go to Section 70.A.11, if you delete "after wastewater..." Is this saying that you are removing your fecal through the drainfield in lieu of disinfection? How do you verify that? It's a performance measure that can't be measured. Section 80 relates to paragraph 11. There is no monitoring required in the ground. Section 80 B is ok but 70.A.11 is the issue.

Section 80.D, it occurs there again, footnote of Table 3, it talks about disinfection required, per Section....., then that would be more clear.

Section 70.A.9, TL-3 and disinfection required if.....need loop back to this section with disinfection requirement.

There are some minor typos in the E-regs. I'm confused about recommended or required, Section 90.A of the reg, what is a mandated visit? What is that and what reg is it referencing? What is the difference between mandated and recommended? Why have recommended visits? I think VDH was trying to recognize that these are field observations, not lab samples, and trying to recognize operator discretion, the sentence should read: treatment units up to 0.4 mgd, field sampling shall be performed...in accordance with Table 4. You should put this in your guidance document.

One more clarification, in the same paragraph, "flows up to," do you mean "less than" or "less than or equal to." You want them to be consistent.

There are several minor typos and I will send to Allen separately.

As we move forward, will HD put together a separate group to work on permanent reg? What does this group think? I think we need at least one special group or a purely technical group to discuss how we evaluate treatment devices or approve them for some category of use. Other than that, VDH is open to suggestions. VDH thought about calling the ad-hoc group, thought about just working with this advisory group. There is a lot of institutional knowledge at this table, time is of the essence, I don't know that we can call that other group together and get it done quickly. There is concern that the advisory group did not get to adequately review the ad-hoc committee's work for the emergency regulations.

I would like to see an agenda and schedule to develop the permanent regulations. Set some deadlines and goals. We don't have that right now, BOH meets quarterly, the filing deadlines for the register are set, I'm fearful the timeline will show that a draft of the permanent regs needs to have been done last week. Our NOIRA gets published on April 26 and everything will index over that schedule. The BOH is the regulatory body. There is additional lag time. Should we work with this group?

The comments you have already received on this and the implementation manual, I don't think there will be many contentious issues for the permanent regs. You had a lot citizens on the ad-hoc committee. It was a much larger group. Would the group look at manufacturer treatment devices? Yes, and there would be other things. If VDH is going to have a list, and the units have been demonstrated to meet a certain treatment level, then what sort of protocol do you need to measure whether a treatment device does what it says it will do?

Advisory committee is willing to continue working on this and help BOH develop the permanent regulations. The public comment period starts next week on April 26. Is everyone willing to serve on the advisory committee? Yes. Hopefully, there won't be a lot of contentious issues. If we need a work-group for listing manufacturer devices, then we can do it.

After public comment period, would the advisory committee look at the comments. Timetable would help focus our discussion.

We're at the point of bringing forth staff level draft to the advisory committee. I would assume that you would take the e-regs and tweak them. The NOIRA coming out next week is to convert the E-regs to final regs.

Next Topic: Variation of the same issue, we will continue to get proposals on properties that are wet with water tables that are less than 6-inches to the surface. Our staff have found that there is actually standing water on the dispersal field. If the performance is that effluent has to stay in the ground, how can you meet performance with water standing on top of the ground? Question, if you are out there in July, you have some redox features, but how will we know whether the watertable is shallow but not above the surface? That's the basic question. When VDH asks for engineering justification, what would it look like? If it is a wetland, it will be wet during times of the year. You should verify during a certain time of the year. If it is standing water there, it will likely be there during certain times of the year. If wetland, it should go into a different evaluation.

Broader issue: wetland is jurisdictional. Areas that are inundated because it's in a floodplain or it's a stormwater pattern. If you have an area that will be periodically flooded, that should be the focus. If the construction is not allowed, then you won't have the associated regulation. One of the concerns is that the localities can't regulate the development. Inundation is an area of concern. If local ordinance prevents sewage system under local ordinance, then I think it is pre-empted by the e-reg. Another point to consider, HB1166 legislation, when it was passed, it says this section shall not prohibit localities from enforcing local ordinances. The pre-emption would be from HB1788, which ever one that authorizes the emergency regulations. That's why the Bay Act was included. If you are not under the Bay Act, then that's where the pre-emption comes from.

If it is periodically flooded, then we want to ask people to review the site during the winter. We also have a watertable study, it's 2-years. Inundation by flooding or tide, the water we

are talking about is coming from the sky and just laying there because there is not enough slope to move the water away from the site. We would like to address this from a technical perspective. Provisions and technical ways to construct monitoring wells to determine wetness. You could also do some simple math to evaluate how much water goes into ground, in Albemarle County, subtract ET, then you get 7-inches of water into the aquifer, you could look at precipitation rates, etc. We can try to extract some this information. Rather, than 2-year study, you could set up a feasible and relatively quick review.

What's our concern? Is it a permitting problem? We can dump sewage into a stream on one side of the fence. It's a license to pollute. What is the difference between ponding and going into a stream? This regulation says you can't do it. Why is the regulation written that way? The code says it goes under ground. Dept looking for guidance to help PEs determine ponding. This is for the reg we have. We've done the Maryland thing, you can't get a permit in the summer. But it is only one winter. That's the only thing we've come up with to solve this problem of surface ponding where sewage system is going. Unless we can look at it in the winter, we don't have a way to evaluate it. What about a drainage impact study? Looking for logical approach for the same review for every submission.

Vince Day, Valarie Rourke, John Harper, and Marcia Degen are willing to look at this issue. Mitigation issue, there is a calculation, either there will be or there won't be water there. DEQ is approving constructed wetlands prior to discharge. Majority are mitigation wetlands. Now we are putting wastewater treatment system in front of wastewater treatment system. What information can be submitted to expedite a review?

Next Topic: GMP #147, first paragraph, it's obsolete upon adoption of the emergency regs, it does two things, it answers 1) does treatment device meet a certain level; and provides (2) prescriptive designs and configurations that don't comply with the regs—they are variances to the design and construction criteria. We thought there would be an evaluation protocol in the E-regs and capture those design criteria. On first point, E-regs don't capture evaluation protocol. On second point, the E-regs do most of what's in GMP #147.

We can keep GMP #147 as is, dump it, or modify it. What are the committee's thoughts on this policy? We are looking for some guidance from this group on where VDH should go with it. Submit comments to Allen and review them at the next meeting. I wouldn't mind doing that, please send the committee a link to GMP #147. I was wondering about getting meeting minutes sooner. I'd like everyone to sign up on townhall. Minutes are posted on townhall website.

No public meetings planned on the NOIRA.

Next meeting date? Without timeline, hard to know, would like to schedule meetings around the timeline. June 11, 2010 will be next meeting date. If something comes up between now and then, VDH will notify us. What about meeting location? Ease of parking at perimeter center. Can't get the video-conferencing there.