

Virginia Department of Health (VDH)
Sewage Handling and Disposal Advisory Committee (SHADAC)
Regulatory Reform Subcommittee
March 10, 2016 – Meeting Summary

Primary Meeting Location

Madison Building
109 Governor Street
Richmond, Virginia 23219

Remote Location:
Polycom Mobile Application

List of Attendees:

Subcommittee Members at Primary Location

Alan Brewer Curtis Moore Morgan Kash Valerie Rourke

Subcommittee Members at Remote Location

Colin Bishop

VDH Staff and Members of the Public at Primary Location

Lance Gregory Angela Redwine Chris Beatley

1. Welcome and Subcommittee Purpose

Mr. Brewer welcomed the subcommittee and reiterated that the purpose of the subcommittee was to assess and propose to the full SHADAC, options for regulatory reform.

Mr. Gregory then asked if there were edits to the draft summary from the previous meeting.

Mrs. Rourke asked for a clear explanation of the term “environmental assimilation”.

Mr. Bishop commented that the term could fall into two broad categories. One is looking at the receiving environment how the effluent is assimilated into the environment, and the second is reuse where it is being assimilated into the home.

The subcommittee then approved the meeting summary.

2. VDH - Current Regulatory Framework

Mr. Gregory then presented a summary for the agency's current regulatory framework (see attached "Onsite Sewage Program Structure")

Mr. Moore commented that it is unclear who enforces standards for onsite soil evaluators (OSE). He added that he feels the Department of Environmental Quality has a closer relationship with wastewater system operators, than VDH has with licensees.

Mr. Brewer commented it is striking that from a big picture, VDH is charge with some non-regulatory functions (i.e. education), and he wondered if the agency was actually best served providing those functions.

Mr. Moore asked whether each locality has the same agreement, or whether there is a discussion about the services each locality wants VDH to provide. He pointed to localities where state employees are asked to enforce local ordinances that do not conform with VDH regulations, and noted that part of the process was broken.

Mrs. Rourke commented that one area of reform is how to address inconsistencies at the county level. She added that where you have conflict between a state regulation and a local ordinance, the state regulations would prevail.

3. Challenges with Program from Stakeholder Perspective

Mr. Brewer commented that the subcommittee was charged with developing options for regulatory reform. He noted that, as a starting point, it is helpful to identify the problems the committee is trying to solve.

Mrs. Rourke commented that it would be helpful for the agency to summarize the challenges with the onsite program and what changes the agency thinks could be made.

Mr. Brewer stated that from a local government perspective, one issue is the various layers of regulations and local ordinances that don't always align leading to conflict and confusion. He added that customer service and transparency are big components, and that is challenging given the conflicts. One example Mr. Brewer provided would be efforts in a locality to protect an impaired waterway by implementing stream buffers. However, if a design meets the state regulations a property owner could install an onsite system within the buffer.

Mr. Brewer also identified the betterment loan program and aligning VDH resources with the goals of the program as additional challenges.

Mr. Kash voiced concern about issuing permits in areas that clearly shouldn't be developed, such as sensitive areas in the Chesapeake Bay watershed, even though the site meets the minimum regulations.

Mr. Moore noted challenges with the lack of enforcement on operation and maintenance, and regulatory oversight. He also notes issues with consistency statewide, adding that the loss of the regional sanitarians may have played a role in the loss of consistency. Mr. Moore also commented on unlicensed installers still being allowed to install systems, and conflicts with local ordinances.

Mr. Kash commented that the definition of a “failure” is not clear.

Mr. Moore commented that VDH doesn’t do itself any service by providing free repair permits for million dollar homes, in terms of the fee structure. He added that the regulations provide somewhat of a preferential benefit to someone that can afford to meet stringent regulations (e.g. poor person couldn’t develop a property requiring a high end AOSS, but others may be able to afford the AOSS costs).

Mr. Moore also noted a challenge of blurring the line when a VDH employee steps over from being a regulator to begin a designer.

Mr. Brewer commented that there is one regulatory standard that has no flexibility to deal with income; there needs to be another financial solution.

Mrs. Rourke noted another challenge is trying to look at wastewater as part of a spectrum of water management. VDH needs to look at its role in surface water and groundwater management and needs to be more interconnected with other programs at a state level. When there is overlap, it really needs to be spelled out in the regulations.

Several members also noted the need to overcome historical baggage in the program in order to move forward, as well as the need to address issues where a wastewater solution cost more than the property it is intended to serve.

4. Status Report to SHADAC

Mr. Brewer commented that he would be happy to give a 5 minute update on the subcommittee’s status at the next full SHADAC meeting.

5. Determine Next Steps and Meeting Dates

Mr. Brewer asked Mr. Gregory to share the listed challenges with the subcommittee after the meeting, and asked the subcommittee members to add to those challenges over the next few weeks to start putting them in general topic areas. After the list of challenges is complete, the subcommittee will start working on solutions.

Mr. Moore suggested having any recommendation tied back to a mission statement from the group, and suggested making the mission statement an agenda item for the next meeting. Mr. Brewer asked the subcommittee to plan on meeting again in early May.

6. Adjourn

Second Meeting of the Regulatory Reform Subcommittee

March 10, 2016, 10:00 a.m. - 12:00 p.m.
109 Governor Street, Richmond, 10th Floor, Room 1025

Objectives for the Second Meeting:

- Affirm the responsibilities and purpose of the Subcommittee.
- Discuss VDH's description of current regulatory framework.
- Discuss challenges of current program from sub-committee member organization's perspective.

AGENDA

- 10:00 a.m. **1. Welcome and Subcommittee Purpose** (Alan Brewer)
• To assess and propose to the SHADAC, options for regulatory reform.
- 10:05 a.m. **2. VDH - Current Regulatory Framework** (Lance Gregory)
• Discussion of Information presented.
- 10:35 a.m. **3. Challenges with Program from Stakeholder Perspective**
(Subcommittee)
- 11: 40 a.m. **4. Status Report to SHADAC ?**
(Subcommittee)
- 11:50 a.m. **5. Determine Next Steps and Meeting Dates**
(Subcommittee)
- 12:00 p.m. **7. Adjourn** (*sharp*)

Virginia Department of Health Onsite Sewage and Water Services Program Structure

The Code of Virginia (the Code) established the Virginia Department of Health (VDH) to administer and provide comprehensive environmental health services, to educate citizens about health and environmental matters, develop and implement health resource plans, collect and preserve health statistics, assist in research, and abate hazards and nuisances to the health and the environment. The purpose of these activities is to improve the quality of life in the Commonwealth.

The Division of Onsite Sewage and Water Services, Environmental Engineering, and Marina Programs (DOSWSEEMP) and local health department (LHD) Environmental Health (EH) staff are tasked with administering sections of the Code dealing with onsite sewage systems, alternative discharging systems, and private wells (the Onsite Sewage and Water Services Program). Activities outlined by the Code within the Onsite Sewage and Water Services Program include:

- Long range planning for the handling and disposal of onsite sewage.
- Review (office and field) of applications with corresponding work from private sector designers for subdivision reviews, permit approvals, letters for residential development, and private well construction.
- Issuance of construction permits or denials for applications with corresponding work from private sector designers.
- Field review and system design of certain applications without corresponding work from private sector designers to issue or deny permits for the construction, installation, and modification of a sewerage system or treatment works.
- Development of the Engineering Design Review Panel (EDRP).
- Implement regulations regarding operation and maintenance of alternative discharging sewage systems.
- Conduct regular inspections of alternative discharging sewage systems.
- Establish and implement regulations governing the collection, conveyance transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems.
- Establish and implement regulations regarding the maintenance, inspection, and reuse of alternative onsite sewage systems (AOSS).
- Collection of fees and assessment of fee waivers for onsite sewage system and private well permit applications.
- Establish and maintain a statewide web-based reporting system to track the operation, monitoring, and maintenances of AOSS.
- Establishment and administration of a uniform schedule of civil penalties for violations of onsite sewage and alternative discharge regulations.
- Process appeals for adverse case decisions.
- Establish and implement an onsite sewage indemnification fund.
- Process and grant waivers, where applicable, from treatment and pressure dosing requirements.

- Establish and implement a betterment loan eligibility program.
- Process permit applications and waiver request for voluntary upgrades.
- Administer the Onsite Operation and Maintenance Fund.
- Process safe, adequate and proper evaluations.
- Enter into agreements with any appropriate federal agency to regulate and monitor the collection, transportation, conveyance, treatment and disposal of sewage.
- Establish and facilitate the Sewage Handling and Disposal Appeal Review Board.
- Establish and implement regulations pertaining to the location and construction of private wells.

Under authority provided by the Code, the Board of Health has promulgated the following regulations pertained to the Onsite Sewage and Water Services Program: the Sewage Handling and Disposal Regulations (12VAC5-610), the Regulations for Alternative Onsite Sewage Systems (12VAC5-613), the Fee Regulations (12VAC5-620), the Private Well Regulations (12VAC5-630), the Alternative Discharging Sewage Treatment Regulations (12VAC5-640), and the Schedule of Civil Penalties (12VAC5-650). The primary purpose(s) for each of these regulations is listed below:

Sewage Handling and Disposal Regulations

- To assure that all sewage is handled and disposed of in a safe and sanitary manner;
- To guide the State Health Commissioner in her determination of whether a permit for handling or disposing of sewage should be issued or denied; and
- To guide property owners in the requirements necessary to secure a permit for handling and disposing of sewage.

Regulations for Alternative Onsite Sewage Systems

- To establish a program for regulating the operation and maintenance of AOSS;
- To establish performance requirements for AOSS;
- To establish horizontal setbacks for AOSS that are necessary to protect public health and the environment;
- To discharge the Board's responsibility to supervise and control the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and treatment works as they affect the public health and welfare;
- To protect the quality of surface water and ground water;
- To guide the Commissioner in determining whether a permit or other authorization for an AOSS shall be issued or denied;
- To inform property owners, applicants, onsite soil evaluators, system designers, and other persons of the requirements for obtaining a permit or other authorization for an AOSS; and
- To develop, as DOSWSEEMP deems necessary, best management practices for the purpose of recognizing acceptable methods to reduce pollution from AOSSs.

Fee Regulations

- To establish a procedure for determining the fees for services provided by the department for onsite sewage systems, alternative discharge systems, and private wells;
- To establish procedures for the refund of fees; and
- To establish procedures for the waiver of fees.

Private Well Regulations

- To Ensure that all private wells are located, constructed and maintained in a manner which does not adversely affect ground water resources, or the public welfare, safety and health.;
- To guide the Commissioner in her determination of whether a permit for construction of a private well should be issued or denied;
- To guide the property owner or his agent in the requirements necessary to secure a permit for construction of a private well; and
- To guide the property owner or his agent in the requirements necessary to secure an inspection statement following construction.

Alternative Discharging Sewage Treatment Regulations

- To ensure that discharging systems are permitted, constructed, and operated in a manner which protects the environment and protects the public welfare, safety and health;
- To guide the commissioner in her determination of whether a permit for construction and operation of a discharging system should be issued or denied;
- To guide the property owner or his agent in the requirements necessary to secure a permit for construction of a discharging system;
- To guide the owner or his agent in the requirements necessary to secure an operation permit following construction;
- To guide the owner or his agent in the requirements necessary to operate and maintain a discharging system;
- To guide the Commissioner in her determination of whether a discharging system is being operated in a manner which protects public health and the environment; and
- To guide the Commissioner in her determination of what actions are appropriate to correct violations of this chapter.

Schedule of Civil Penalties

- To establish a uniform schedule of civil penalties for violations of 12VAC5-610 (includes 12VAC5-613), and 12VAC5-640;
- To support enforcement activities necessary to discharge the Board's responsibility to supervise and control the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage as they affect the public health and welfare;
- To support enforcement activities necessary to discharge the Board's responsibility to exercise due diligence to protect the quality of ground and surface waters; and

- To guide the Commissioner in charging civil penalties.

In addition to these regulatory sections, the Board also promulgated the Authorized Onsite Soil Evaluator Regulations (12VAC5-615) to implement, administer, and enforce licensing requirements for onsite soil evaluators. However, the 2007 Virginia General Assembly enacted House Bill 3134, which transferred implementation, administration, and enforcement of licensing to the Department of Professional and Occupational Regulation. DOSWSEEMP is currently in the process of developing a proposed action to repeal 12VAC5-615.

The administration of the Code and these regulations are essentially broken into two staffing segments: DOSWSEEMP staff and local health department EH staff. The general duties of each of those segments is provided below.

Central Office

DOSWSEEMP staff are responsible for programmatic activities such as: providing assistance within the legislative process; regulatory development; policy and guidance development; agency staff and industry stakeholder training; database management; programmatic data analysis; website management; variance processing; indemnification fund processing; product evaluations; EDRP processing; Sewage Handling and Disposal Advisory Committee facilitation; agency representation before the Sewage Handling and Disposal Appeals Board; providing assistance to local health departments for appeals processing; providing technical assistance to local health department when dealing with complex cases; development of agreements with federal and state agencies, where applicable (e.g. Chesapeake Bay Watershed Implementation Plan); long range planning; and overall program quality assurance.

Local Health Departments

The local health department EH staff are responsible for programmatic activities such as: processing applications; issuing or denying permits for onsite sewage systems, alternative discharging sewage systems, and private wells (with or without accompanying work from private sector designers); inspection of onsite sewage systems, alternative discharging sewage systems, and private wells; data entry for onsite sewage system, alternative discharging system, and private well applications, permits, installations, and operation; processing request from local governments for development (safe, adequate and proper evaluations, subdivisions proposals, special use permits, etc.); issuance of operation permits for onsite sewage systems and alternative discharging systems; issuance of inspection statements for private wells; issuance of pump and haul permits; inspection and approval of sewage handlers; providing courtesy reviews of private sector evaluations; sewage and water complaint investigations; administration of enforcement actions when violations of sewage and well regulations are observed; enforcement of required operation and maintenance for AOSS and alternative discharging sewage treatment systems; conducting informal fact finding conferences; conducting Level I and Level II reviews of private sector work; conducting field evaluations and designs for bare applications; inspection of discharge systems; and administration of other activities outline through agreements with local governments.