

**Virginia Department of Health (VDH)
Sewage Handling and Disposal Regulations
Administrative – Revisions Subgroup**

Date: May 10, 2022

Time: 1:00 pm

Location: 109 Governor Street, 5th Floor Conference Room, Richmond, VA
(with WebEx virtual option)

Attendees:

Lance Gregory – VDH

Anne Powell – VDH

Anthony Creech – VDH

Karri Atwood – VDH

Curtis Moore – Virginia Onsite Wastewater Recycling Association (VOWRA)

Danna Revis – VOWRA, Licensed Operator, and Licensed Onsite Soil Evaluator (OSE)

Tanya Pettus – Department of Professional and Occupational Regulation (DPOR)

Joshua Anderson – Loudoun County Health Department

Tom Ashton – Certified Professional Soil Scientist (CPSS) and OSE

1. Welcome

Anne Powell welcomed the group to the meeting.

2. Follow-Up from April Meeting

Anne Powell announced the notes from the April meeting are posted on the Virginia Regulatory Town Hall website.

3. Topics from Other Subgroup Meetings

a. Licensing of OSS Professionals

Lance Gregory mentioned his recent work with the creation of the Rainwater Harvesting Regulations. This process received a lot of internal feedback regarding wording in regulations. Mr. Gregory offered the example in SHDR where it says that no part of installation should be covered before inspection. The recent directive is to specify to whom that requirement is directed. VDH could add “the licensed installer” as the audience of that requirement. This might be a good avenue to indicate whom is responsible and what license is required. In the event of a violation, it would be clear who the responsible party is/was. These changes could be sent as a Fast Track instead of with the overall SHDR revisions. Danna Revis agreed that this would be a good group to work through those changes.

b. Outdated Terminologies / Technologies

Anne Powell mentioned that certain outdated terminologies and technologies within the SHDR have been brought up in other subgroups. For example, low flow fixtures, mottles vs. redoximorphic features, vitrified clay piping, open-type joints. These outdated terminologies and technologies can be omitted or updated with the revisions to the SHDR.

Danna Revis mentioned that while low flow fixtures are consistently used in residential settings, low flow fixtures are not consistently used in commercial settings because these larger facilities rely on higher water pressure.

c. Prescriptive-Based versus Performance-Based Regulations

Anne Powell mentioned one of the biggest differences in regulations is the prescriptive nature of the SHDR and the performance-based nature of the Regulations for Alternative Onsite Sewage Systems. To maintain the separate standards of these regulations, any prescriptive aspects will remain in the SHDR. Joshua Anderson mentioned that maybe the subgroup should not put up those guardrails just yet and keep the “prescriptive vs. performance” in mind as we move forward because the industry is changing rapidly.

d. Graywater

Anthony Creech stated that VDH is obligated to create regulations for graywater with recent changes to Code of Virginia. Mr. Creech is interested to know if the subgroup members think VDH should regulate graywater within the SHDR or create a new standalone regulation for graywater. One of the challenges with graywater reuse is that without the graywater, blackwater is the only thing in an onsite sewage system (OSS). Lance Gregory suggested that if graywater is going to be part of the SHDR, then maybe VDH should set up another subgroup.

Anthony Creech asked the group to consider how VDH regulations would handle graywater systems for buildings on public sewer. Danna Revis stated that VDH already handles complaints for sewage on the ground for building on public sewer.

Joshua Anderson mentioned that perhaps VDH should consider changing the name of the Regulations to be more comprehensive; the program has grown beyond sewage handling and disposal.

Curtis Moore asked the group if the proposed rainwater regulations have anything to do with plumbing inside the building or if that is handled by the building code. Anthony Creech mentioned that the legislation instructed the board to adopt regulations for the use of rainwater and gray water. Lance Gregory mentioned that internal plumbing is handled through a Memorandum of Understanding with the Department of Housing and Community Development (DHCD). Curtis Moore stated that if VDH is only looking exterior of the structure, the only thing regulated would be something exterior that re-circulates back into house or the ultimate disposal of the graywater. Anthony Creech stated that it depends on what the reuse the graywater is for because there are varying levels of treatment required for different graywater uses. Lance Gregory mentioned that many homeowners think splitting up graywater means they can just dispose of graywater on the ground surface.

Curtis Moore mentioned that residential wastewater is no longer residential quality effluent when the graywater is removed. This is something VDH should consider.

Anne Powell stated that if graywater is included in the SHDR, the definition of wastewater will need to be revised and graywater is a standalone regulation, the definitions would need to be harmonious. Curtis Moore added that the specific definitions within wastewater need to be harmonious with building code as well.

Danna Revis asked the group about toilets without the use of water, like composting and incinerating toilets; how would those be handled with the revisions to the SHDR.

Curtis Moore stated that new construction requires indoor plumbing which pushes people toward toilets with sewage disposal. Danna Revis agreed that there are only certain places where those technologies are appropriate. Lance Gregory mentioned that the privy section of the SHDR is currently ambiguous.

Danna Revis asked what the purpose statement for graywater reuse would be; stating that graywater use is different here in Virginia compared to more arid areas of the country.

e. Reorganization of Regulations

Lance Gregory mentioned that the Office of Environmental Health Services (OEHS) received feedback while working through revising the Private Well Regulations and creating the Rainwater Harvesting Regulations regarding the formatting and organization of Regulations flowing with the process of the programs.

f. Crafting Regulations Today

Lance Gregory led the group in a walk through specific sections of the SHDR to get an idea of what can be removed and what needs updating.

Section 20 – do not need to restate purpose of regulations, because it is inherent in the Code of Virginia that states regulations are needed

Section 40 – Administration of the Regulations – these are essentially definitions of Board, Commissioner, Department, and local health department (LHD) – these can be listed under definitions and then mentioned in the “shall” statements throughout the SHDR

Section 60 – Sewage Handling and Disposal Appeals Review Board – omit because it is just restating what it already says in the Code.

Lance Gregory stated that VDH will likely strike the administrative language except for where it is not specifically mentioned in Code of Virginia or the Administrative Process Act (APA).

Karri Atwood pointed out that VDH could take out the current reference to the APA and say “in accordance with APA.”

Lance Gregory listed Section 200, 210, 220, and 230 as other administrative sections that can be omitted.

Lance Gregory stated that the SHDR put emphasis on null and void, revocation, and revalidation of permits. Feedback from other regulatory reviews has pointed toward aligning more with other programs within VDH with “suspension” and “revocation” of permits. Lance stated that legislative services wants to clean up the number of options.

g. Permit Expiration and Permit Transfers

Anne Powell mentioned that another subgroup discussed expiration dates for construction and repair permits being 18 months (with one optional 18-month extension). The discussion was centered on if 18 months was still a suitable length of time before expiration or if the timeframe should be shortened.

Anthony Creech mentioned that VDH could just issue a permit for 36 months in the first place. Lance Gregory brought to the subgroups attention that Code of Virginia §32.1-164.1:1 speaks to permits being valid for 18 months. Curtis Moore mentioned that 18 months is generous because most building permits do not last that long. Mr. Moore stated that he usually sees extensions of permits with second owners who bought the property with the permit. Lance Gregory mentioned recent legislation that allows for transferable permits. The permit automatically transfers ownership with the sale of a property but there is a voluntary mechanism to submit a form to the LHD about transfer of permit and property. Mr. Gregory stated that he is curious about concerns over the OSE contract with first property owner, but not second property owner. Curtis Moore stated that the OSE’s work is with the property itself, not who owns it. Mr. Moore stated that he only sees it as a problem when the owner wants to change house size and/or house location. Mr. Moore stated that he thinks legislation for transferable permits did help reduce null and void permits when builders sell properties to private owners before septic system goes in.

Joshua Anderson mentioned that development companies with separate branches would require re-permitting. Lance Gregory offered an example: a permit expires, new property owner brings paper work back into VDH and re-applies without OSE’s involvement, VDH does not have a reason to not approve a new permit for this property. If a property owner comes in with OSE plans dated from 2014, VDH could issue a permit and OSE would not have any idea their design was being used. Curtis Moore mentioned that the site conditions are more of a worry than the design (for example if the lot cleared properly). Mr. Moore asked if VDH could require a letter from the owner or OSE that nothing has changed on the site. Curtis stated that he thinks between one and two years after the original design is appropriate for issuing a permit, but longer than two years could require some sort of verification from the designer. Mr. Moore asked if professional engineers and surveyors have a time period for their stamp/seal.

Joshua Anderson mentioned that a popular technology 10 to 15 years ago may not be the best available technology now. This is one of the reasons Mr. Anderson thinks an OSE’s verification statement after 18 months would be helpful.

4. Additional Proposals / Discussion from Subgroup Members

5. Next Steps for Subgroup / Preparation for Next Meeting

Anne Powell stated that in preparation for the next subgroup meeting, she would:

1. Begin drafting revised formatting with brief outline
2. Begin drafting language to include license requirements for specific audience “shall” statements
3. Begin cleaning up sections no longer required (i.e. APA specifications)
4. Look into other permitting agency’s language regarding “suspension” and “revocation”

Ms. Powell concluded the meeting with the announcement of the next meeting for the Administrative Subgroup scheduled for Tuesday, June 14, 2022 at 1:00pm.

AGENDA

1. Welcome / Brief Introductions (5 minutes)
2. Follow-Up from April Meeting (notes posted to Town Hall) (10 minutes)
3. Topics from Other Subgroup Meetings (45 minutes)
4. Additional Proposals / Discussion from Subgroup Members (45 minutes)
5. Next Steps for Subgroup / Preparation for Next Meeting (15 minutes)