

VIRGINIA:

DEPARTMENT OF HEALTH PROFESSIONS

DEPARTMENT OF ENVIRONMENTAL HEALTH HEARING

October 21, 2015

9:00 a.m.

When heard at:

Department of Health Professions

9960 Mayland Drive

Henrico, Virginia 23233

Suite 300, Training Room 2

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Henrico, Virginia 23230
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1 October 21, 2015

2 MR. GREGORY: Thank you for coming this
3 morning to the Virginia Department of Health's public
4 hearing to discuss the proposed amendments to the Sewage
5 Handling and Disposal Regulations to establish
6 requirements for gravelless material and drip disposal.
7 My name is Lance Gregory. I'm an Environmental Health
8 Coordinator with the Virginia Department of Health.
9 After today's hearing, if you have questions or comments
10 feel free to give me a call. My e-mail is
11 lance.gregory@vdh.virginia.gov or you can contact me by
12 phone at (804) 864-7491.

13 So the purpose of this meeting, public
14 hearing, is for the agency to seek public comments on
15 the proposed amendments to the Sewage Handling and
16 Disposal Regulations. Both oral and written comments
17 may be submitted. And copies of the proposed
18 regulations have been provided and they appeared in the
19 Virginia Registrar of Regulations on -- appeared on
20 August 24, 2015, and that began a 60-day public comment
21 period.

22 And I apologize that this is out of focus.
23 The purpose of this presentation is to provide a brief
24 historical background of the use of gravelless material
25 and drip dispersal in Virginia, to discuss legislation,

1 House Bill 1726, in the development of the emergency
2 regulations for gravelless material and drip dispersal.
3 To provide an overview of the amendments to the Sewage
4 Handling and Disposal Regulations contained in the
5 emergency regulations for gravelless material and drip
6 dispersal. To provide an overview of the agency's
7 response to the public comments on those emergency
8 regulations. And then to provide an overview of the
9 proposed regulations that we were presenting today.

10 So gravelless material was first recognized
11 by VDH in 1987 as an acceptable means of dispersing and
12 disposing of wastewater. In 2002, the State Health
13 Commissioner issued Guidance Memorandum and Policy, or
14 GMPs 102, which was the first of our policies regarding
15 the use of gravelless material. And three subsequent
16 policies were GMPs 116, 127, and 135. And GMP 102 was
17 rescinded prior to the issuance of the GMP 127.

18 So the gravelless material is complying
19 with the requirements of those policies or approved for
20 use in Virginia. And GMP 116 allowed a maximum
21 absorption area reduction of 50 percent when using
22 gravelless material in lieu of gravel and pipe. GMP 127
23 allowed a 1 for 1 replacement of gravelless material for
24 gravel and pipe. GMP 135 allowed a maximum absorption
25 area reduction of 25 percent in texture group one two

1 soils, and a maximum absorption area reduction of 15
2 percent in texture group four soils when gravelless
3 material was used in lieu of gravel and pipe.

4 Drip dispersal was first recognized by VDH
5 in GMP 67, which was issued in 1995. However,
6 experimental systems using drip dispersal were installed
7 prior to the issuance of that GMP. A series of five
8 GMPs, GMP 67, 87, 88, 96, and 107 were issued by the
9 Commissioner to set physical construction, design, and
10 installation standards for drip dispersal systems. And
11 GMPs 67, 87, 88, 96 were rescinded prior to the issuance
12 of GMP 107. And performance and operational
13 requirements for drip dispersal are also covered by the
14 Regulations for Alternative Onsite Sewage Systems.

15 And this fuzzy graphic here, this
16 comparison depicts a trench system with four lines, and
17 shows where the maximum reduction was taken under the
18 previous GMPs for gravelless material. So, for example,
19 for this example, the reductions were taken completely
20 from the number of trenches and are based on texture
21 group one, two and three soils.

22 On the first picture, under GMP 116, gravel
23 and pipe was substituted with two trenches. So the four
24 lines would have been a conventional system under gravel
25 pipe. And then GMP 116 would have been reduced under

1 two lines.

2 Under GMP 127 the gravel and pipe would've
3 been substituted one for one with graveless materials.
4 And under GMP 135 gravel and pipe would substitute it
5 with three gravelless trenches.

6 House Bill of 1726 was introduced during
7 the 2003 [sic] session of the general assembly. And the
8 House Bill 1726 mandated the Board of Health to
9 promulgate regulations for chamber and bundled expanded
10 polystyrene distribution systems, and other effluent
11 distribution system technologies the board deemed
12 necessary. House Bill 1726 specified that the
13 regulations must be effective within 280 days of
14 enactment. So for that reason, the Board used the
15 emergency rulemaking process authorized by the APA.
16 House Bill 1726 was approved and signed by Governor
17 McDonnell on March 12, 2013.

18 In response to House Bill 1726, VDH's
19 Office of Environmental Health Services convened two
20 technical advisory committees to identify stakeholder
21 concerns and to provide input on development of the
22 emergency regulations. And those were the Chamber and
23 Bundled Expanded Polystyrene technical advisory
24 committee and the Drip Dispersal technical advisory
25 committee or TACs. Members of the TACs included

1 manufacturers of currently approved gravelless material,
2 manufacturers of drip dispersal products,
3 representatives from the Virginia Onsite Wastewater
4 Recycling Association, representatives from the Virginia
5 Association of Professional Soil Scientists, and
6 representatives from the Virginia Society of
7 Professional Engineers, representatives from the
8 American Council of Engineering Companies of Virginia,
9 Alternative Onsite Sewage System Operators, and Onsite
10 Sewage System Installers, and ADH district staff.

11 The TACs served in an advisory role to
12 assist in the development of the emergency regulations
13 and to assist VDH in addressing stakeholder concerns.
14 And OEHS held a series of five meetings, three for the
15 Chamber and Bundled Expanded Polystyrene TAC, and two
16 for the Drip Dispersal TAC. And the summaries for each
17 of those meetings can be found on the Townhall website.

18 Documents reviewed by the TACs during those
19 series of meetings include: House Bill 1726, VDH GMP
20 116, GMP 127, GMP 135, list of approved non-gravelless
21 manufacturers and products and also GMP 107.

22 And based on the comments from the two
23 TACs, VDH develop the emergency regulations for
24 gravelless material and drip dispersal, and put them
25 forward for executive branch review. And Governor

1 McDonnell signed the emergency regulations on
2 January 2nd, 2015.

3 And upon signing the reg -- signing the
4 emergency regulations, GMP 116, 127, and 135 were
5 rescinded and replaced with GMP 135 A.

6 Substantive amendments regarding gravelless
7 material apply to all gravelless material used in
8 accordance with Section 32.1-163.5 in the Code of
9 Virginia.

10 The intent of the requirements contained in
11 the emergency regulations sections 930(F), 940(D),
12 950(D) and Table 5.4 were to meet the mandated
13 requirements contained in House Bill 1726 and also to
14 address the comments from TACs. The emergency
15 regulations were also intended to shift requirements
16 from existing VDH GMPs into regulations, and also to be
17 inclusive of all gravelless material technologies, both
18 currently approved and materials seeking approval in the
19 future; so it's not simply just chambers and products.

20 The emergency regulations specify the
21 process for approving new gravels material and include a
22 requirement products and the emergency regulations also
23 set physical characteristic approval in Virginia. And
24 those characteristics such as product width and loading
25 rate were based primarily or previously contained

1 requirements in the GMP. Revisions to sections and
2 table 5.4 with area requirements. And those revisions
3 are based on the minimum requirements that were
4 contained and that were discussed among the chamber and
5 TACs.

6 The emergency regulations specify the
7 approving to new gravelless material and products. And
8 then the emergency regulations also set the minimum
9 physical characteristics for gravelless material seeking
10 approval in Virginia. And those characteristics, such
11 as product width and load rating, were based primarily
12 on the characteristics and requirements that were
13 previously contained in the GMPs. Revisions to section
14 950(D)(2) and Table 5.4 set the criteria for determining
15 the minimum area requirements for gravelless material.
16 And those revisions are based on the minimum area
17 requirements that were contained in GMP 135 and they
18 were discussed among the CBEP TAC members. Ultimately,
19 it came out to a minimum sizing for gravelless material
20 equating to a 25 percent reduction in texture group one,
21 two, three soils and a 15 percent reduction in texture
22 group four soils, when compared to minimum sizing for
23 gravel and pipe systems.

24 And while many of the items previously
25 contained in the GMP were carried over into the

1 emergency regulations, the following items were not
2 carried over and therefore are no longer conditions or
3 limitations to the installation of gravelless material.
4 Those include limitation on the number of bedrooms.
5 Restrictions on use in Soil Drainage Management areas.
6 Preservation of gravel "footprint" when using gravelless
7 material. The 50 percent reduction that was previously
8 allowed under GMP 116 is no longer allowed. The maximum
9 is the 25 percent. The requirement that a notice of
10 substitution be submitted following installation. And
11 requirement for manufacturers' certification of
12 installers. Requirements for manufacturer warranty, and
13 requirements for financial assurance.

14 Those limitations and conditions don't
15 exist for any other products or materials that are
16 approved by the regulations.

17 Substantive amendments regarding drip
18 dispersal also apply to all drip dispersal systems used
19 in accordance with Section 32.1-163.5 of the Code of
20 Virginia. Section 955 sets the minimum physical
21 construction, design, and installation requirements for
22 drip dispersal components and systems as a whole. And
23 these requirements, again, are based on GMP 107 and
24 comments from the Drip Dispersal Technical Advisory
25 Committee. And the Board of Health deemed these

1 requirements necessary for inclusion as part of the
2 emergency regulations. The emergency regulations then
3 included tubing specifications, requirements for the
4 minimum linear feet of a system, installation depth of
5 drip systems and emitter spacing, among other physical
6 construction and design requirements.

7 Section 955(C) of the emergency regulation
8 contains the minimum absorption area requirements for
9 drip dispersal, which are based on the same sizing
10 method contained in GMP 107.

11 Following the Governor's approval of the
12 emergency regulation, a public comment period was
13 opened. VDH received 35 comments on the emergency
14 regulation language. The emergency regulations became
15 effective on March 14, 2014, with an expiration date of
16 September 13, 2015.

17 Following promulgation of the emergency
18 regulations, VDH reconvened the TACs to discuss the
19 stakeholder comments that were received during the
20 public comment period, and also to propose edits to the
21 emergency regulation language to be incorporated in the
22 proposed final regulations that we're discussing today.

23 As the agency moved forward with the
24 drafting of proposed final regulations, it became
25 apparent that the emergency regulations were going to

1 expire before final regulations could be developed. So
2 on August 24, 2015, VDH requested a 6-month extension
3 for the emergency regulations. On August 3rd, 2015,
4 Governor McAuliffe granted that request to the
5 extension, and pushed the expiration date of the
6 emergency regulations to March 14, 2016.

7 The proposed regulations are simply an
8 extension of the emergency regulations with a few minor
9 edits. They were agreed upon by the TACs. The
10 emergency regulations were based on previous agency
11 policies that already provided for the use of gravelless
12 material or it provided for the use of drip dispersal
13 within the Commonwealth. So we are just extending on
14 that.

15 A majority of the changes between the
16 emergency regulations and the proposed regulations we're
17 discussing today were minor edits, things such as
18 changing from the term of "effluent" instead of
19 "sewage." However, there were several significant
20 proposed revisions that addressed public comments
21 received.

22 Some of the significant revisions were
23 specifying that 10 feet of perforated pipe be installed
24 in gravelless material trenches whenever enhanced flow
25 distribution is used; that drip dispersal systems be

1 designed to protect drip emitters from the effects of
2 siphoning or backflow through the emitters, as well as
3 the establishment of specific range of linear loading
4 rates for drip dispersal.

5 A public comment period is open for the
6 proposed regulations and that ends on October 26, 2015.
7 And then following that public comment period, VDH will
8 likely reconvene the TACs to discuss any public comments
9 that we receive and provide final edits to the proposed
10 regulatory language.

11 Once any necessary final edits are made,
12 the agency will begin the final adoption process by
13 taking the final regulations before the Board of Health
14 for approval. And following approval from the Board of
15 Health, the final regulations will go through executive
16 branch review as they have done for the emergency
17 regulations and for the proposed regulations.

18 If you have any questions or comments
19 please feel free to contact me. That's my presentation.
20 And so with that, I'll open it up. If -- no time limits
21 here. So if you have any --

22 MS. FARLEY: I'm just here to observe. I
23 don't have any comments.

24 MR. GREGORY: Okay. So if you have any
25 comments that you'd like to have registered.

1 MR. MAYER: Yes. On the drip dispersal
2 section -- I'm Mr. Mayer with American Manufacturing,
3 for the record. On the 6.10-955 drip dispersal, it's
4 section -- I believe C3. They put some standards in
5 there of what -- that section, I think it actually
6 should be removed. It doesn't adequately cover the
7 issue of when you're loading and it may be misleading
8 since it is an engineering system already. That should
9 be covered by the engineer and is best practices.
10 That's the only comment that I have.

11 MR. GREGORY: Thank you. And so
12 essentially any comments that are made today are the
13 same as any comment that's posted on that Townhall
14 website. Feel free to post comments.

15 MR. MAYER: Will do. That's about it.

16 MR. GREGORY: And so again, we'll likely
17 reconvene in TACs one more time to address any comments
18 such as that one that we received.

19 MR. MAYER: All right.

20 MR. GREGORY: I really appreciate you-all
21 coming.

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23 PROCEEDINGS CONCLUDED

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CERTIFICATE OF COURT REPORTER

I, JUAN ORTEGA, do hereby certify that I was the Court Reporter who took down and transcribed the proceedings of the Department of Environmental Health Hearing, when held on October 21, 2015, at 9:00 a.m. in Henrico, Virginia.

I further certify this is a true and accurate transcript to the best of my ability to hear and understand the proceedings and other incidents of the hearing herein as set down to the best of my ability.

Given under my hand this 30th day of October, 2015.

JUAN ORTEGA
COURT REPORTER