

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

Date: April 12, 2022

Time: 10:00

Location: WebEx

Attendees:

Lance Gregory - VDH

Anne Powell - VDH

AJ Austin – Blue Ridge Health District

Joshua Anderson – Loudoun County Health District (LCHD)

Ryan Fincham – LCHD

Josh Hepner – LCHD

Katherine Merten – Rappahannock-Rapidan Health District

Brianna Cornett – Cumberland Plateau Health District

Curtis Moore - Virginia Onsite Wastewater Recycling Association (VOWRA)

John Sawdy - Onsite Soil Evaluators (OSE)/Installer

Laura Farley - Virginia Realtors

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

Mike Lynn - Chair, Sewage Handling and Disposal Advisory Committee (SHADAC)

1. Introductions

All in attendance introduced themselves to the group.

2. Review Workgroup’s “Purpose and Policy”

Anne Powell opened the meeting by discussing the purpose of the subgroup. VDH has seven subgroups, planning on four meetings per subgroup over the next four months. The subgroups will work to assist in the proposed revisions of our regulations. VDH will take feedback from the subgroups to the SHADAC, and then VDH will do a Notice of Intended Regulatory Action (NOIRA).

3. Background on specific aspects of Sewage Handling and Disposal Regulations and Code Authority.

Anne Powell explained the main background and code authority for the “programmatic changes” subgroup. The transition of design services to the private sector has been the main change to the onsite program since the last regulatory revision. Another big policy change came with SB 1396 (GA 2021 special session). This legislation made it the Commonwealth’s policy to provide universal access to wastewater treatment that is protective of public health and the environment.

4. Proposal(s) from VDH Facilitator

5. Proposals from Subgroup Members

Mike Lynn stated that it still seems unclear to him that there is buy in from the local health districts regarding the transition of services to trust private sector designers. He does not know that most private sector onsite sewage professionals understand their responsibility and rely on the local health departments (LHD) to fix any issues. VDH previously discussed how 90% of the program focused on permitting, and only 10% of resources go toward the ongoing operation of the system. Another problem is that standards and expectations tend to differ between the local health districts.

John Sawdy explained that he does not think the repairs done without a permit (considered “maintenance”) bring onsite sewage systems into good working order. He is hesitant about the decision to allow this “maintenance” without a permit. Mr. Sawdy thinks the onsite program needs a better way to monitor how people are obtaining licenses as onsite sewage system professionals. He has observed work done by licensed professionals that does not meet Regulations.

Tanya Pettus let the group know that the Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (WWWOSSP) Board at DPOR has discussed the lack of procedural requirements to verify licensure before an application for permit is accepted by VDH.

Josh Anderson gave some perspective from his local health district. There has been a concern that since VDH is tasked with issuing the permit but not doing the fieldwork and VDH staff are concerned that their license is at risk if they miss something in their review of private sector designs. VDH has not heard from DPOR whether they are risking their license.

John Sawdy stated that he was under the impression that the state employees were protected.

Josh Anderson stated that the Environmental Health positions in the onsite program require a staff to hold a DPOR license.

This brought up the question: Does VDH have to issue the permit, or could the private sector issue the permit? It was mentioned that the Code of Virginia required VDH to issue permits.

Lance Gregory asked how the onsite program could get the most value out of VDH resources.

Mike Lynn stated that he thinks the requirement for VDH to do such a detailed Level 1 review keeps VDH in the office. If VDH staff could get out in the field more often for a detailed Level 2 review, they could catch more issues and get them corrected. Sometimes applications go to deemed approved because VDH staff fail to review the proposal within the required timeframe. He wonders why VDH does not allow for deemed approval on day 1 after an application is submitted.

Katherine Merten stated that resources at VDH are (and have been) stretched thin, and she sometimes feel like VDH is a permit factory. VDH staff in her local health district have been

trying hard to do 100% inspections of onsite sewage system installations. These inspections have been very revealing; things are changed from the permit and those changes are not accurately documented. In addition, the property owners have expectations that everything is “good” if VDH issues a permit. It is hard to explain to the owner that it is based on trust of the private sector design.

Lance Gregory then asked where in the onsite sewage system’s lifespan should VDH focus resources for the greatest public health protection. Level 1 review, Level 2 review, installation inspection, or operation and maintenance.

Josh Anderson stated that he thinks the answer is Level 2 reviews, but his local health department does not have those resources. Therefore, the Level 1 review is the best they can do to protect public health.

John Sawdy stated that an improvement in training, continuing education, and license requirements for all onsite sewage professionals would certainly improve the program as a whole. He trusts there will always be some designers that get a more detailed review because there are more frequent issues with their work. He asked if VDH could figure out a way to grade designs to say what needs more scrutiny. Mr. Sawdy did not think OSEs should be able to issue their own permits.

Mike Lynn asked how often a Level 1 review results in a fundamental change to a private sector OSE design. Mr. Lynn thinks the soil evaluation is typically the biggest factor in VDH reviews of private sector designs.

Curtis Moore suggested going to a deemed approval permit. He wonders whom these regulations have in mind; is it the first owner of the system, the person seeking the permit, the private sector, or the developer? Mr. Moore also asked if there is a reason that VDH still provides free subdivision reviews for local jurisdictions.

Mike Lynn stated that creating a lot does not affect human health or the environment because there is no onsite sewage system in the ground.

Lance Gregory stated that the subgroup has an opportunity to create regulations that are more equitable with these revisions. We can move focus from the resources spent on the onsite sewage system designs toward operation and maintenance. We can shift resources to identifying existing systems in need of repair, and homeowner education on preparation for operation and maintenance and repair. The Sewage Handling and Disposal Regulations revision subgroups for Climate Change has discussed addressing onsite sewage systems throughout their lifespan with ideas like renewable operation permits.

Curtis Moore stated that if you really want to look at the back end of onsite sewage systems, you need to go to a renewable operating permit. Renewable operating permits could be issued at property transfers. This would help shift the focus beyond the first flush.

Mike Lynn informed the group that DEQ asked LHD for information on the status of single-family alternative discharging system maintenance to do renewal of discharge permits. That process corrected many issues with discharge systems.

Josh Anderson stated that he is a big fan of getting out on systems on the back end. The issue with a renewable operation permits, is that if you do a 5-year renewable operation permit you are looking at many systems. The downfall is that it would become a paperwork exercise because of the sheer number of Operation Permits.

Curtis Moore wonders if renewable operation permits could be tied it to the pump outs of onsite sewage systems. This might help get repair work done and even expose those property owners who need financial assistance with repair work.

Josh Anderson stated that unlicensed individuals perform many pump-outs. These individuals are just haulers, not licensed operators. Pumpers need to be responsible for submitting that information.

John Sawdy brought up that the locality usually sends out the notification for the 5-year pump outs, so that is not VDH getting that information. If you leave it to the sewage handler to say a system is functioning, that could be problematic. Sewage handlers are not licensed and do not have the knowledge, skills, and abilities of a licensed operator. The sewage handlers are not necessarily looking into the proper function of the onsite sewage systems.

Mike Lynn asked if Tanya Pettus could provide the subgroup with the DPOR policy about the license requirements when a pump out is occurring.

Katherine Merten stated that environmental health staff in her local health district feel limited in what we can do about licensure.

Josh Anderson stated that if it license verification was a regulatory requirement, it would be easy because VDH would have already checked during application and installation processes.

John Sawdy stated that there need to be real consequences for individuals who perform the work without being properly licensed.

Katherine Merten stated that once a permit is issued, a property owner feels they have an assurance. Level 2 reviews need to be performed prior to the issuance of a permit. It would be entirely too confrontational to revoke a permit when a Level 2 review was performed after issuing a permit.

Josh Anderson stated that the general mandate in his local health department has been public health; however, there is a lot of confrontation that can happen. He feels like VDH staff have a duty to help everyone that comes through the door. There are mechanisms to correct installations from unlicensed designers.

Laura Farley stated that the national average of homeownership is 11 years, and Virginia is close to that average.

Anne Powell thinks that if future regulations have more enforcement, VDH needs to be very clear about how enforcement actions occur.

Curtis Moore asked if VDH has authority for renewable operation permits. Lance Gregory stated that he believes so, but this process of revising the regulations can include any suggestions for amending to VDH's Code authority.

6. Additional Proposals from Subgroup Members

Josh Anderson believes there are many things in the current Guidance, Memoranda, Policy (GMPs) that should be put in the regulations.

Curtis Moore suggested considering having an overarching regulation that allows for process manuals (policies). This might help provide more flexibility in editing or updating process manuals without regulatory revision.

John Sawdy stated a desire for standard design packages.

Brianna Cornett stated that her local health district in southwest Virginia is still doing a lot of fieldwork for bare applications. Brianna thinks one of the hardest part for the property owners in this region is the fees (applications and design services).

7. Next Steps for Subgroup / Preparation for Next Meeting

Anne Powell concluded the meeting with the mention of the next meeting date on May 10, 2022 at 10:00am.

AGENDA

1. Introductions
2. Review Workgroup's "Purpose and Policy"
3. Background on specific aspects of SHDR and Code Authority
4. Proposal(s) from VDH Facilitator
5. Feedback from Subgroup Members
6. Additional Proposals from Subgroup Members
7. Next Steps for Subgroup / Preparation for Next Meeting