

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

Date: April 12, 2022

Time: 10:00 am

Location: WebEx

Attendees:

Lance Gregory – VDH

Anne Powell – VDH

Anthony Creech – VDH

Curtis Moore – Virginia Onsite Wastewater Recycling Association (VOWRA)

Josh Hepner – Loudoun County Health Department (LCHD)

Joshua Anderson – LCHD

Ryan Fincham – LCHD

Laura Farley – Virginia Realtors

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

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 Sewage Handling and Disposal Advisory Committee (SHADAC), and then VDH will do a Notice of Intended Regulatory Action (NOIRA). All are welcome to join meeting. Meetings will be posted on Town Hall along with notes from each meeting.

3. Background on specific aspects of SHDR and Code Authority

4. Proposal(s) from VDH Facilitator

Anne Powell stated that the Administrative Subgroup is somewhat overarching. The Administrative Subgroup will include discussion from other subgroup meetings. Powell addressed that there are regulations about how to write regulations. Many items can (and must) be removed from the regulations when already covered in the code. An example is the Authority Section is no longer required.

Powell said another part of the Regulations covered under the administrative subgroup is definitions. This subgroup will collect any new terms from other subgroups and define those

terms as needed. However, when a term is only used once, it can be defined in the body of the regulations. The grandfather clause, applications, and permit types are other items to discuss in the administrative subgroup. In addition, this subgroup will work to provide consistent forms for the onsite program located in one place.

Lance Gregory specified that the Programmatic Changes Subgroup will cover big-picture changes to the program as a whole, while the Administrative Subgroup will look into specific processes within the program.

Anthony Creech stated he thinks the regulations should include a sunset date on a grandfather clause. He does not think the grandfather clause should be a free pass 20 years down the road. Creech also mentioned that graywater reuse is currently only allowed as experimental, but VDH has a requirement in the Code to create regulations for graywater. Creech sees that as a programmatic change that needs to be handled as a stand-alone regulation or within the SHDR.

Lance Gregory asked if the SHADAC needed to be updated. Anthony Creech mentioned that VDH is required to factor in Environmental Justice when writing regulations.

Lance Gregory also mentioned that VDH needs to look into how community systems and mass drainfields are permitted. There are no checks to ensure community systems will be properly operated and maintained (O&M).

5. Feedback from Subgroup Members

Curtis Moore said that all large flows are not the same. Before you can get to large flow systems, you have to separate out what qualifies for community system. There is a big difference between a community-based residential system and an industrial/commercial system. If there is a system shared by multiple people, you need something where you can do enforcement.

Josh Anderson mentioned that some of these large systems are going to last for decades; 30 years down the road, financial assurance may be peanuts. We should try to think beyond the immediate impact.

Curtis Moore stated that we need to look programmatically about what we want to encourage versus what we want to discourage. Bonding may discourage people from doing community systems.

Laura Farley addressed that if we are talking about a multi-house or community system, there is usually oversight from a Home Owner's Association (HOA).

Curtis suggested not allowing an HOA to own a community onsite system. He has seen many management entities that do not understand the importance of O&M. A responsible management entity is required to become a "utility" when sewer connections reach a certain number in Virginia.

Anne Powell mentioned the recent mapping projects from the Virginia Institute of Marine Science (VIMS) with the identification of Wastewater Hotspots. These areas with greater number of onsite sewage system failure might look toward community-based systems as the only option in the future. Mr. Moore stated that these systems would likely involve local government to own and/or operate those systems. For example: Septic Tank Effluent Pumping (STEP) systems to push effluent to a larger utility.

Josh Anderson proposed reaching out to Scott Fincham with the Loudoun County Health Department, as he handles these types of systems for Loudoun County.

Curtis Moore stated that localities might take ownership of some community systems. The simpler the community systems are, the more likely utilities will be to take them on.

Josh Hepner stated that Environmental Health Specialists (EHSs) have a hard time navigating through all of the regulations and policies to determine what the minimum requirements are for a set of plans from private sector designers. He would like to see that all the GMPs are either in the regulations or easily accessible to staff. This would help to standardize forms and design requirements across LHDs and private sector designers.

Josh Anderson said there is not a good standard for repair situations to spell out what you can and cannot do under the waiver. This allows for wide interpretations between LHDs

Josh Hepner mentioned that VDH might need to expand the definition of a “failure” or “failing system”. Lance Gregory stated that if VDH does not create a line for repairs, VDH is not being equitable and giving everyone a chance for a fully protective system (for public health and the environment).

Josh Hepner also mentioned that he has questions about what can an OSE do versus when a PE is needed on a repair. Curtis Moore stated that he thinks repairs should be addressed as their own separate animal.

Josh Hepner continued to say that LCHD sees many repairs come to light with real estate transactions. Often the repair system is being sold to someone else.

Curtis Moore mentioned the impact of failing drainfields on groundwater. This is often ignored when addressing failing onsite sewage systems. You have to rely on who is evaluating the system as to what is the best fix, but in situations that are not going to fully comply, that you are doing the best that you can. Mr. Moore also said that we also need to accept some of the situations where people are doing the best they can, for example giving an owner a discharge permit in SWVA as opposed to a treated sand mound.

Josh Hepner said that if VDH is going to have a maintenance and monitoring program, VDH needs adequate staff to operate such a program. Anne Powell mentioned that VDH would need to provide fiscal impact information with the proposed revised regulations, and can lay out potential staffing resource impacts at that point.

Josh Anderson stated that LCHD's enforcement does not issue Notices of Alleged Violation (NOAVs). They do a Notice of Violation (NOV). One of the problems he ran into in other localities is the NOAV process takes too long. But if there is sewage on the ground it may take too long. Lance Gregory mentioned that the NOAV is part of required "due process" through the Administrative Process Act (APA). One option to eliminate an eminent health hazard would be to include a method of permit suspension in the SHDR (similar to that of the Rainwater Harvesting and Food Regulations). Lance asserted that the alleged part of the NOAV is required and that he would try to obtain more details on this and get back to the group.

Josh Hepner said that if VDH has an Enforcement Program and O&M reports come back saying that a system is not functioning properly, LHDs would issue a lot more NOAVs. It would be beneficial to streamline the process and get systems/owners in compliance as quickly as possible. Lance Gregory agreed that dedicated enforcement staff might help streamline the process.

Curtis Moore mentioned a comment from the earlier Programmatic Changes Subgroup about how difficult it is for the LHD to enforce licensure of onsite sewage system professionals. A centralized enforcement staff may also help with that issue. Mr. Moore also stated that there is no real mandate that requires repair permits to expire after 18 months. Nothing to say repair permits could not expire in a shorter time period.

Josh Anderson mentioned that the biggest roadblock with Informal Fact Finding Conferences (IFFC) is the availability of the health director. Currently, IFFCs must be overseen by the health director; but Lance Gregory thinks that the Regulations could provide an opportunity for other designees to oversee IFFCs. Josh Hepner recommended that each region could have a select group of people that are qualified to oversee IFFCs. Mr. Hepner also suggested shortening the 90 days from IFFC to Case Decisions to help get sewage off the ground faster.

6. Additional Proposals from Subgroup Members

Laura Farley mentioned that the lack of inspectors is creating delays in real estate transfers. Ms. Farley also mentioned that it is difficult to find records of septic systems in some LHDs. Lance Gregory followed up by saying that access to historical septic records is very important for both the LHDs and the private sector onsite sewage professionals.

Danna Revis (VOWRA) was unable to attend the meeting but provided the following comments via email:

- This is code, not regs, but it is related. Sec 32.1 needs a section on installation, including that an onsite sewage system must be installed by a licensed operator. When you read Chapter 6, it's all about evaluation, plans, a little about operation, but nothing that says a system must be installed following the rules. Maybe something on construction inspections. These would be covered in the procedural regulations, but seems like a good idea to have some backup for the general principles in the code. Everything is theoretical and even up-for-grabs until the system goes into the ground. In other words, it's all imaginary until the system goes into the ground and something like that should be reflected in the code, especially since the AOSS regs are performance-based.

- Make all non-residential systems conditional with the basics of the wastewater characterization recorded in the land records - # people, strength.

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 1:00 pm.

AGENDA

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2. Review Workgroup's "Purpose and Policy"
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5. Feedback from Subgroup Members
6. Additional Proposals from Subgroup Members
7. Next Steps for Subgroup / Preparation for Next Meeting