

**Virginia Department of Health (VDH)  
Sewage Handling and Disposal Advisory Committee (SHADAC)  
March 23, 2016**

**Meeting Location:**

5<sup>th</sup> Floor, Main Conference Room  
James Madison Building  
109 Governor Street  
Richmond, Virginia 23219

**List of Attendees:**

Advisory Committee Members

Bill Sledjeski	Laura Farley	Brent Johnson	Curtis Moore
Cody Vigil	Dwayne Roadcap	Mike Lynn	Chris Beatley
Valerie Rourke	Doug Canody	Alan Brewer	Adam Ferris

Brent Johnson sat in as the representative for Virginia Section, American Institute of Professional Geologists.

Laura Farley sat in as the representative for Virginia Association of Realtors.

Doug Canody sat in as the representative for Virginia Society of Professional Engineers.

Chris Beatley sat in as the representative for 2009 Appropriations Act: Manufacturer, System Installer.

Adam Ferris sat in as the representative for Virginia Environmental Health Association.

VDH Staff and Members of the Public

Angela Redwine	Mike Burch	Trisha Henshaw	Todd Grubbs
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Adrian Joye

**Administrative**

Chairman Lynn welcomed the committee members, VDH staff, and the public to the meeting. 12 members are in attendance, meeting has a quorum.

**Travel Vouchers**

Mr. Grubbs distributed travel vouchers to the members present, any committee members sitting in for others will need to contact OEHS for a voucher and W-9 form.

## **Approve Agenda**

Chairman Lynn made a motion to approve the agenda. The motion was seconded by Mr. Moore. The committee approved the agenda.

## **SHADAC Appointments**

Bill Sledjeski is the newly appointed representative for Virginia Association of Professional Soil Scientists.

## **Review Summary from September 16, 2015 Meeting**

Mr. Moore made a motion to approve September 16, 2015 meeting minutes. The motion was seconded by Mr. Vigil. The committee approved the minutes.

## **Review Summary from December 2, 2015 Meeting**

Ms. Rourke stated a few minor edits. Mr. Moore made a motion to approve December 2, 2015 meeting minutes barring grammatical errors. The motion was seconded by Mr. Brewer. The committee approved the minutes.

## **Public Comment Period**

No one spoke.

## **Old Business**

### **1. Regulatory Update**

#### **a. Final regulations for gravelless material and drip dispersal.**

Mr. Roadcap provided a brief update on the status of the regulations for gravelless material and drip dispersal. The regulations were approved by the Board of Health at their last meeting and are currently waiting on executive branch review. The Board of Health also approved moving forward with the repeal of the AOSE Regulations. Following executive branch review the repeal of the AOSE regulations will open up for 60 day comment period prior to the final repeal.

#### **b. Period review of the Regulations for Alternative Onsite Sewage Systems (AOSS).**

Mr. Roadcap stated the periodic review of the AOSS recently closed a public comment period and received 35 comments. Staff will review and evaluated the comments. One particular staff focus on will be on current direct dispersal requirements and trying to eliminate frequent variance requests to TL3 and disinfection.

#### **i. Letter from SHADAC to Commissioner.**

Mr. Roadcap added the letter from SHADAC to the Commissioner is being forwarded to the Commissioner. OEHS has already completed recommendation #1 of accepting stakeholder input by virtue of the periodic review public comment period that recently closed. The agency will assess those recommendations along with the Commissioner's response.

**c. Promulgation of the revised Fee Regulations.**

Mr. Roadcap stated new fee regulations would allow for a \$100.00 minor modification permit. Mr. Moore wanted to know what would constitute a minor modification and if a distribution box replacement would require a fee? OEHS felt the minor modification could be used for any permit not requiring a soil evaluation. Distribution box replacement could be either a voluntary upgrade or repair neither of which requires a fee. Mr. Roadcap explained repairs are required action that must be done whereas voluntary is strictly the choice of the owner. Repairs require a Notice of Alleged Violation (NOAV) and the expectation they be repaired in 60 days.

**d. Promulgation of the revised Alternative Discharge Regulations.**

Mr. Moore asked if Marcia J. Degen, Ph.D., P.E., could come to next meeting and present on the Alternative Discharge Regulations. Staff will check on her availability. Chairman Lynn wanted to know how far you needed to go with site evaluation before discharge could be considered an option. Mr. Roadcap stated there should be no option for dispersal to the soil before considering surface discharge. Mr. Ferris added discharging permits do not expire and there are probably some out there that would have other options available now.

**2. Update from Regulatory Reform Subcommittee.**

Mr. Moore reported a group of 4 or 5 had met to look at regulatory reform. Group has prepared a draft recommendation but would like okay to review program while waiting on legislation. The group is trying to understand the program structure and developing a list of challenges with regulatory reform. Mr. Gregory has distributed the draft to everyone. Mr. Moore is looking for input from the full committee, with the idea that they need to understand what they are facing, combining this regulation with another regulation, discussed legacy, history, and used to doing things the same way. The group was specifically looking at regulations; we have discovered to make programmatic changes with the regulation side. Can we look at the programmatic side? Group does not want to overstep bounds, is it permissible to look at the programmatic and regulatory side? Depending on the plan for HB558, if no direct delivery of LHD, then regulatory environment may be needed.

Chairman Lynn stated no motion is needed.

Mr. Brewer suggested a look at whole program and explore big picture issues.

Mr. Beatley recommends finding issues and challenges.

Mr. Brewer stated subcommittee will look into before next meeting.

Ms. Rourke stated regulation reform requires interaction with other agencies and localities.

Mr. Moore will share list. Subgroup will meet again in three weeks and report back to full committee.

### **3. Issues related to internal VDH policies and processes; standing agenda item.**

Mr. Roadcap reported OEHS is putting together a SAP policy and hope to have finalized before July 2016. Will share draft with group in near future. The issue is the fact dealing with old systems and new uses.

Mr. Ferris suggested polling local districts.

Chairman Lynn concerned building officials issue lots of permits, the impact on obtaining permits, policy could become the standard for real estate transactions, and stigma associated with being labeled non-conforming.

Mr. Brewer stated private sector individuals are licensed, has concern with establishing procedures for private sector.

Ms. Rourke hoped to see regulation rather than policy, wanted to know how building inspectors would interact with local health departments.

Mr. Moore concerned with how procedure would apply to properties with records opposed to properties without records. Mr. Moore inquired if agency anticipated a charging a fee in the future.

Mr. Ferris commented interaction would be initiated by building inspectors but would be between local health department and property owner.

Mr. Brewer wanted to know the effect of privatization would have on the policy, if the plan moves forward.

### **4. Legislative update: well permit expiration; license terminology; safe, adequate, and proper.**

Mr. Roadcap explained the bill to change well permit expiration from 54 months to 18 months to match onsite sewage system permits did not pass. HB566 which changes authorized onsite soil evaluators to licensed onsite soil evaluators wherever mentioned in the Code of Virginia passed and will go into effect July 1, 2016.

## **New Business**

### **1. HB 558 Create a Plan: Overview and Repair Fund**

Mr. Roadcap provided the SHADAC a draft of OEHS's: "HB 558: Development of a Plan to Eliminate Evaluation and Design Services by the VDH for Onsite Sewage Systems and Private Wells Project Management Plan". Document divides plan into four elements; responsible for developing the consumer protection elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals (Group A); responsible for developing the transitional planning elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals (Group B); responsible for developing internal procedures and improvement elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals (Group C); and responsible for developing the repair funding elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals (Group D). OEHS would like one member of the SHADAC to serve in each group along with an OEHS representative and a VDH field representative.

Mr. Brewer noted groups would be subject to FOIA and subject to advance notice of meetings. He also views VDH as a regulator and stated DPOR can offer dispute resolution.

Mr. Sledjeski wanted to research how the transition was in other professions. Noted there is limited time to put together plan, stakeholders have tendency to sidetrack. VDH is tasked with putting together plan.

Mr. Roadcap offered 10 Senators voted against plan, hopes proposal would be simple and have buy in from group.

Chairman Lynn wanted to know if bill lined up with expectations and solving repair fund will be difficult.

Ms. Rourke feels this is a large task and group should postpone regulatory review. Plan should reflect any required regulation changes.

Chairman Lynn agreed outcome may require regulation change.

Mr. Roadcap noted smaller groups make more progress. Chairman Lynn agreed.

Mr. Vigil expressed interest in serving with Group A. Mr. Moore also wants to see if there is interest from Ms. Frye on working with Group A.

Mr. Moore expressed interest in Group B.

Mr. Sledjeski offered to serve Group A or B.

Mr. Moore nominated Chairman Lynn to serve on Group C.

Mr. Brewer will work with Group D. Committee will also see if Mr. Bishop has interest also in Group D.

Chairman Lynn asked if VDH stops design services what will be the future role.

Mr. Roadcap stated more construction inspections, manage data, level 1 and level 2 reviews, and pursue grant funding, enforcement and monitoring.

Mr. Moore stated VDH budget may shrink with privatization.

Mr. Roadcap says VDH could work more with operators and follow-up.

Mr. Moore stated money may be available in other places for funding. Chairman Lynn stated underground storage tank fund an excellent example of a public private partnership.

Mr. Sledjeski offered perhaps research money could help with repair funding.

Mr. Moore felt the plan is start and the group adjourned.

**Adjourn 1:45 p.m.**

## CHAPTER 444

*An Act to direct the State Health Commissioner to develop a plan to eliminate evaluation and design services by the Department of Health for onsite sewage systems and private wells; report.*

[H 558]

Approved March 11, 2016

**Be it enacted by the General Assembly of Virginia:**

**1.** *§ 1. That the State Health Commissioner (the Commissioner) shall develop a plan for the orderly reduction and elimination of evaluation and design services by the Department of Health (the Department) for onsite sewage systems and private wells. The plan shall provide for the protection of public health as the Department transitions to accepting only applications that are supported with private site evaluations and designs from a licensed professional engineer or licensed onsite soil evaluator or, for any work subject to regulations governing private wells in the Commonwealth, by a licensed water well system provider.*

*The plan shall include (i) provisions related to transparency of costs for services provided by the private sector, including options available, necessary disclosures for cost of installation and operation and maintenance, and recommendations to resolve disputes that might arise from private sector designs, warranties, or installations; (ii) a date by which all site evaluations and designs will be performed by the private sector; (iii) a transition timeline to incrementally eliminate site evaluations and designs provided by the Department to fully transition all such services to the private sector; (iv) procedures and minimum requirements for the Department's review of private evaluations and designs; (v) a timeline to incrementally require private evaluations and designs for certain categories of services such as applications for subdivision review, certification letters, voluntary upgrades, repairs, submissions previously accompanied by private sector work, new construction, and reviews pursuant to § 32.1-165 of the Code of Virginia; (vi) a recommendation concerning whether the Department can reduce or eliminate services in a particular area on the basis of the number and availability of licensed private-sector professional engineers and onsite soil evaluators and licensed water well system providers to provide services in that particular area; (vii) necessary changes to application fees in order to encourage private sector evaluations and designs and projected schedules for those changes; (viii) a recommendation concerning the need to establish a fund to assist income-eligible citizens with repairing failing onsite sewage systems and private wells; (ix) provisions for disclosing to the consumer that an option to install a conventional onsite sewage system exists in the event that an evaluator or designer specifies an alternative onsite sewage system where the site conditions will allow a conventional system to be installed; (x) provisions for involvement by the Department in resolving disputes that may arise between the consumer and the private sector service providers related to evaluations or designs of onsite sewage systems and private wells; (xi) provisions for the continued provision of evaluation and design services by the Department in areas that are underserved by the private sector; (xii) necessary improvements in other services performed by the Department that may derive from the transition to private evaluations and designs, including programmatic oversight; inspections; review procedures; data collection, analysis, and dissemination; quality assurance; environmental health surveillance and enforcement; timely correction of failing onsite sewage systems and determination of reasons for failure; operation and maintenance; health impacts related to onsite sewage systems; and water quality, including impacts of onsite sewage systems on the Chesapeake Bay; (xiii) an analysis of the ranges of costs to the consumer for evaluation and design services currently charged by the Department and ranges of the potential costs to the consumer for such services if provided by the private sector, and (xiv) legislative, regulatory, or policy changes necessary to implement the plan.*

*The Commissioner shall present an interim report or the completed plan and recommendations to the Governor and the General Assembly by November 15, 2016.*

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 90

An Act to amend and reenact §§ 32.1-163.1, 32.1-163.4, 32.1-163.5, 32.1-164.1:01, 32.1-176.5:2, and 32.1-248.3 of the Code of Virginia, relating to licensed onsite soil evaluators; terminology.

[H 566]

Approved March 1, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-163.1, 32.1-163.4, 32.1-163.5, 32.1-164.1:01, 32.1-176.5:2, and 32.1-248.3 of the Code of Virginia are amended and reenacted as follows:**

**§ 32.1-163.1. Personal liability of sanitarians defined.**

A sanitarian while acting within the scope of his employment in approving or denying applications for permits for onsite sewage disposal systems or while performing checks of or reviewing and approving field evaluations completed by ~~authorized~~ *licensed* onsite soil evaluators shall be subject to personal liability only for his gross negligence or intentional misconduct.

**§ 32.1-163.4. Procedures for application backlogs; individuals approved to conduct evaluations for septic system or other onsite sewage system permit applications.**

A. In any case where the local or district health department experiences a septic system or other onsite sewage system permit backlog of ~~fifteen~~ 15 working days from the application filing date, the Commissioner shall contract with ~~authorized~~ *licensed* onsite soil evaluators for the field evaluation of the backlogged application sites. The Department shall review these evaluations and may approve the permit applications upon finding that the evaluations are in compliance with the Board's regulations implementing this chapter. The Department shall not be required to do a field check of the evaluation prior to issuing the permit; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment.

B. The Board, Commissioner, and Department of Health shall accept private evaluations for septic system or other onsite sewage system permit applications only from ~~authorized~~ *licensed* onsite soil evaluators.

C. The Board's regulations shall include a definition of backlog providing a set number or a percent of the received applications.

**§ 32.1-163.5. Onsite sewage evaluations.**

A. Notwithstanding other provisions of this chapter, for purposes of subdivision review, permit approval, and issuance of letters for residential development, the Board, Commissioner, and Department of Health shall accept private site evaluations and designs, in compliance with the Board's regulations for septic systems and other ~~on-site~~ *onsite* sewage systems, designed and certified by a licensed professional engineer, in consultation with an ~~authorized on-site~~ *licensed onsite* soil evaluator, or by an ~~authorized on-site~~ *a licensed onsite* soil evaluator. The evaluations and designs included within such submissions shall be certified as complying with the Board's regulations implementing this chapter.

B. The Department shall not be required to perform a field check of private evaluations and designs prior to issuing the requested letter, permit or approval; however, the Department may conduct such review of the work and field analysis as deemed necessary to protect the public health and integrity of the Commonwealth's environment. Within ~~fifteen~~ 15 working days from the date of written submission of a request for approval of a site evaluation and design for a single lot construction permit, and within ~~sixty~~ 60 days from the date of written submission of a request for approval of a site evaluation and design for multiple lot certification letters or subdivision review, the Department shall (i) issue the requested letter, permit or approval or (ii) set forth in writing the specific reasons for denial. If the Department fails to take action to approve or disapprove the designs, evaluations, or subdivision reviews within the time specified herein, the designs, evaluations or subdivision reviews shall be deemed approved and the appropriate letter, permit or approval shall be issued. Notwithstanding any other provision of law or the provisions of any local ordinance, counties, cities and towns shall comply with the time limits set forth in this subsection.

C. Nothing in this section shall authorize anyone other than an individual licensed as a professional engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 to engage in the practice of engineering.

D. The provisions of this section shall not apply to any locality that has entered into a contract with the Board of Health in accordance with Chapter 678 of the 1994 Acts of Assembly nor to a proprietary, pre-engineered septic system deemed by the Department to comply with the Board's regulations.

**§ 32.1-164.1:01. Onsite Sewage Indemnification fund.**

A. There is hereby created the Onsite Sewage Indemnification fund whose purpose is to receive moneys generated by a portion of the fees collected by the Department of Health pursuant to subsections



C and E of § 32.1-164 and appropriated by the Commonwealth for the purpose of assisting any Virginia real property owner holding a valid permit to operate an onsite sewage system when such system or components thereof fail within three years of construction and such failure results from the negligence of the Department of Health. The fund may also be used, in the discretion of the Board, to support the program for training and recognition of ~~authorized~~ *licensed* onsite soil evaluators.

B. Ten dollars of each fee collected by the Department of Health pursuant to subsections C and E of § 32.1-164 shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department of Health by the General Assembly as it deems necessary.

C. The owner of an onsite sewage system that has been permitted by the Department of Health may cause, by filing a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner to review the circumstances of the onsite sewage system failure, if the onsite sewage system has failed within three years of construction. Upon the Commissioner's finding that the onsite sewage system was permitted by the Department and (i) the system or components thereof failed within three years of construction; (ii) that specific actions of the Department were negligent and that those actions caused the failure; and (iii) that the owner filed a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner shall, subject to the limitations stated herein, reimburse the owner for the reasonable cost of following the Board's regulations to repair or replace the failed onsite sewage system or components thereof.

D. Prior to receiving payment from the fund, the owner shall follow the requirements in the Board's regulations to repair or replace the failed onsite sewage system or components thereof.

E. The total amount an owner may receive in payment from the fund shall not exceed \$30,000. Only the costs of the system that failed or the costs of labor and equipment required to repair or replace the failed onsite sewage system or components thereof are reimbursable by the fund.

F. If the Commissioner finds that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from faulty construction or other private party error, the Commissioner may assist the owner of the failed system in seeking redress from the system's builder or other private party.

G. Every request for payment from the fund shall be forever barred unless the owner has filed a complete application as required by the Department. The request shall be filed with the Commissioner within one year from the date that the onsite sewage system or components thereof first failed. However, if the owner was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 shall apply. The owner shall mail the request for payment from the fund via the United States Postal Service by certified mail, return receipt requested, addressed to the Commissioner.

In any action contesting the filing of the request for payment from the fund, the burden of proof shall be on the owner to establish mailing and receipt of the notice in conformity with this section. The signed receipt indicating delivery to the Commissioner, when admitted into evidence, shall be prima facie evidence of filing of the request for payment from the fund under this section. The request for payment from the fund shall be deemed to be timely filed if it is sent by certified mail, return receipt requested, and if the official receipt shows that the mailing was within the prescribed time limits.

Notwithstanding any provision of this article, the liability for any payment from the fund shall be conditioned upon the execution by the owner of a release approved by the Attorney General of all claims against the Commonwealth, its political subdivisions, agencies, and instrumentalities and against any officer or employee of the Commonwealth in connection with or arising out of the occurrence complained of.

H. The Commissioner and the Attorney General shall cooperatively develop an actuarially sound program and policy for identifying, evaluating, and processing requests for payment from the fund.

I. If the Commissioner refuses the request for payment from the fund, the owner may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board.

The Board may promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the administration of the fund consistent with this chapter.

In the event the fund is insufficient to meet requests for payment from the fund, this section and the creation of the fund shall not be construed to provide liability on the part of the Department or any of its personnel where no such liability existed prior to July 1, 1994.

**§ 32.1-176.5:2. Prohibition on private well construction.**

A. No private well shall be constructed within 50 feet of the property line with an adjacent property of three acres or larger that is used for an agricultural operation, as defined in § 3.2-300. The following shall be exempt: (i) the owner of the adjacent property that is used for an agricultural operation may grant written permission for construction within 50 feet of the property line; or (ii) certification that no other site on the property complies with the Board's regulations for the construction of a private well.

B. The Department shall accept private site evaluations and designs, in compliance with the Board's regulations for the construction of private wells, designed and certified by a licensed professional engineer, in consultation with ~~an authorized~~ *a licensed* onsite soil evaluator, or by ~~an authorized~~ *a*

*licensed* onsite soil evaluator. The evaluations and designs included within such submissions shall be certified as complying with the Board's regulations implementing this chapter. The Department shall not be required to perform a field check of private evaluations and designs prior to issuing the requested letter, permit, or approval. However, the Department may conduct such review of the work and field analysis as deemed necessary to protect the public health, integrity of the Commonwealth's environment, and the provisions of this chapter.

C. The Department, prior to issuing a permit, shall require any owner applying for a permit to construct a private well pursuant to the exemptions in subsection A to submit documentation that affirms the well construction site complies with the provisions of this section.

**§ 32.1-248.3. Environmental Health Education and Training Fund.**

There is hereby created the Environmental Health Education and Training Fund, whose purpose is to receive moneys generated by the civil penalties collected by the Department pursuant to § 32.1-164 and appropriated by the Commonwealth for the purpose of supporting, training, educating, and recognizing public- and private-sector individuals in all areas of ~~Environmental Health~~ *environmental health*, including ~~Authorized Onsite Soil Evaluators~~ *licensed onsite soil evaluators* and Department employees. Civil penalties collected by the Department shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department by the General Assembly as it deems necessary. The fund may also be used, in the discretion of the Board, for research to improve public health and for protection of the environment.

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 96

*An Act to amend and reenact § 32.1-165 of the Code of Virginia, relating to State Health Commissioner; State Board of Health; approved sewage system or nonconforming system.*

[H 648]

Approved March 1, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That § 32.1-165 of the Code of Virginia is amended and reenacted as follows:**

**§ 32.1-165. Prior approval required before issuance of building permit; approved sewage system or nonconforming system.**

A. No county, city, town, or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon his finding that safe, adequate, and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of said such permit has been approved by the Review Board. *"Safe, adequate, and proper" means a treatment works that complies with applicable regulations of the Board of Health that are in effect at the time of application.*

B. *The Commissioner shall develop an application and procedure for evaluating an installed treatment works and to determine whether to authorize issuance of a permit for a building designed for human occupancy.*

C. *Nothing in this section shall be construed to prevent the Commissioner or his agent from approving the use of a nonconforming treatment works, provided the treatment works was installed in accordance with the Board of Health's applicable regulations in effect at the time of its installation, is not failing, and is designed and constructed for the sewage flow and strength expected from the building.*

D. *Nothing in this section shall be construed to prevent an owner of real property from receiving a voluntary upgrade pursuant to § 32.1-164.1:3, or other permit, as a condition of approval as a nonconforming treatment works.*

E. *The Board, Commissioner, and Department may accept a certified evaluation from (i) a professional engineer licensed pursuant to Chapter 4 of Title 54.1; (ii) an onsite soil evaluator, onsite sewage system operator, or onsite sewage system installer licensed pursuant to Chapter 23 of Title 54.1; (iii) or other individual with an appropriate certification from the National Sanitation Foundation, or equivalent. The Department may perform an inspection of the certified evaluation but shall not be required to perform a field check prior to the issuance of the written authorization in subsection A.*

**Virginia Department of Health (VDH)**  
**Office of Environmental Health Services (OEHS)**  
**HB 558: Development of a Plan to Eliminate Evaluation and Design**  
**Services by the VDH for Onsite Sewage Systems and Private Wells**  
**Project Management Plan**

**Project Name:** HB558 Privatization Plan

**Project Manager:** OEHS Team

**Primary Stakeholders:** OEHS staff, local health department staff, onsite sewage system and private well owners, Sewage Handling and Disposal Advisory Committee and its representative organizations, Department of Professional and Occupational Regulation staff, private onsite soil evaluators and professional engineers, onsite sewage system installers, onsite sewage system operators, sewage handlers, well drillers, home builders, realtors, environmental interest groups, non-profit organizations that provide assistance to onsite sewage system and private well owners, local government officials, and onsite sewage and private well product manufacturers.

**Project Description:** Develop a plan to eliminate evaluation and design services provided by VDH for onsite sewage systems and private wells, and present the plan to the Governor and the General Assembly by November 15, 2016.

**Project Goals:** Develop a completed plan by November 15, 2016, that incorporates all of the elements outlined in HB 558.

**Project Scope:** Implement HB558 and any matters associated with it.

**Project Deliverables:** A comprehensive privatization plan that includes recommendations for legislative, regulatory, or policy changes necessary to implement the plan.

**Overview:** There are two overriding principles when developing the specific elements of the plan outlined in HB 558. Those principles are to:

- Provide for an orderly reduction and elimination services; and
- Provide for the protection of public health throughout the transition of services.

The ultimate goal is to lay out an end-state vision and detailed steps and milestones for achieving that vision. To the greatest extent possible all applications for onsite sewage systems should be supported with private site evaluations and designs from a licensed professional engineer or licensed onsite soil evaluator, and all applications for private wells should be supported with private site evaluations and designs from a licensed professional engineer, a licensed onsite soil evaluator, or a licensed water well system provider.

The specific elements that must be included in this privatization plan have been broken into four element groups: consumer protection; transitional planning; internal procedures and improvements; and repair funding. The specific elements of each of those groups are included below.

### Consumer Protection Element

- **Transparency of cost.** Provisions related to transparency of costs for services provided by the private sector, including:
  - Options available;
  - Necessary disclosures for cost of installation and operation and maintenance; and
  - Recommendations to resolve disputes that might arise from private sector designs, warranties, or installations.
- **Consumer disclosure.** Provisions for disclosing to the consumer that an option to install a conventional onsite sewage system exists in the event that an evaluator or designer specifies an alternative onsite sewage system where the site conditions will allow a conventional system to be installed.
- **Dispute resolution.** Provisions for involvement by the Department in resolving disputes that may arise between the consumer and the private sector service providers related to evaluations or designs of onsite sewage systems and private wells.
- **Range of cost.** An analysis of the ranges of costs to the consumer for evaluation and design services currently charged by the Department and ranges of the potential cost to the consumer for such services if provided by the private sector.

### Transitional Planning Element

- **Final transition date.** A date by which all site evaluations and designs will be performed by the private sector.
- **Transition timeline.** A transition timeline to incrementally eliminate site evaluations and designs provided by the Department to fully transition all such services to the private sector.
- **Incremental timeline.** A timeline to incrementally require private evaluations and designs for certain categories of services: applications for subdivision review, certification letters, voluntary upgrades, repairs, submissions previously accompanied by private sector work, new construction, and reviews pursuant to § 32.1-165 of the Code of Virginia.
- **Local transitions.** A recommendation concerning whether the Department can reduce or eliminate services in a particular area on the basis of the number and availability of licensed private-sector professional engineers, onsite soil evaluators, and water well system providers to provide services in that particular area.
- **Fee changes.** Necessary changes to application fees in order to encourage private sector evaluations and designs and projected schedules for those changes.
- **Services in underserved areas.** Provisions for the continued provision of evaluation and design services by the Department in areas that are underserved by the private sector.

### Internal Procedures and Improvements Element

- **Review procedures.** Procedures and minimum requirements for the Department's review of private evaluations and designs.

- **Program improvements.** Necessary improvements in other services performed by the Department that may derive from the transition to private evaluations and designs, including:
  - Programmatic oversight;
  - Inspections;
  - Review procedures;
  - Data collection, analysis, and dissemination;
  - Quality assurance;
  - Environmental health surveillance and enforcement;
  - Timely correction of failing onsite sewage systems and determination of reasons for failure;
  - Operation and maintenance;
  - Health impacts related to onsite sewage systems; and
  - Water quality, including impacts of onsite sewage system on the Chesapeake Bay.

Repair Funding Element

- **Repair fund.** A recommendation concerning the need to establish a fund to assist income-eligible citizens with repairing failing onsite sewage systems and private wells.

**Implementation Plan/Milestones:** The following metric outlines the schedule for developing draft recommendations for each element of the plan. The metric also includes a schedule for producing interim reports that can be shared with stakeholders and management for feedback on the plan development process. The interim reports will include all draft recommendations completed by that date, and allow for stakeholder feedback. Once draft recommendations are presented they will continue to be revised throughout the process as feedback is received.

Task	4/6	5/11	6/8	7/13	8/10	9/14	10/12	11/15
Range of Cost	X*		X**					
Incremental Timeline	X*		X**					
Local Transitions	X*		X**					
Fee Changes			X					
Repair Fund			X					
Transparency of Cost					X			
Consumer Disclosure					X			
Dispute Resolution					X			
Final Transition Date					X			
Transition Timeline					X			
Review Procedures					X			
Program Improvements								
Interim Reports		X		X				
Draft Final Report to Stakeholders						X		
Draft Final Report to OCOM							X	
Final Report to Governor and GA								X

\*Partial Completion

\*\*Fully Complete

**Communication Plan:** The Department will rely on the Sewage Handling and Disposal Advisory Committee as its principle source for stakeholder engagement. To the extent that there are other stakeholders and interested parties not represented on the Advisory Committee, staff will develop a list of interested parties who will receive notification of meeting agendas and copies of interim reports. Element Group leaders are encouraged to collaborate with interested parties as necessary. The following metric outlines the schedule for discussing elements of the plan with stakeholders and for receiving feedback on draft recommendations.

<b>Task</b>	3/23 *	3/24 **	4/21 **	5/19 **	6/1 *	6/23 **	7/21 **	9/14 *	9/22 **
Range of Cost				X	X			X	X
Incremental Timeline				X	X			X	X
Local Transitions				X	X			X	X
Fee Changes							X	X	X
Repair Fund	X				X		X	X	X
Transparency of Cost								X	X
Consumer Disclosure								X	X
Dispute Resolution								X	X
Final Transition Date								X	X
Transition Timeline								X	X
Review Procedures		X	X	X		X	X	X	X
Program Improvements		X	X	X		X	X	X	X

\* Sewage Handling and Disposal Advisory Committee

\*\* Environmental Health Managers Meeting

### Project Team Roles and Responsibilities

<b>Team Members</b>	<b>Roles</b>	<b>Responsibilities</b>
OEHS	Overall Project Leader	Responsible for coordinating with element group leaders to facilitate completion of the final draft plan, ensuring that milestones are accomplished, manage communications.
<b>Element Group A Leader: OEHS</b>	Group Leader	Responsible for developing the consumer protection elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals.
SHADAC #2		
OEHS Rep		
VDH field rep		
<b>Element Group B Leader: OEHS</b>	Group Leader	Responsible for developing the transitional planning elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals.
SHADAC #1		
SHADAC #2		
VDH Field rep		
<b>Element Group C</b>	Group Leader	Responsible for developing internal procedures

<b>Leader: OEHS</b>		and improvements elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals.
SHADAC #1		
SHADAC #2		
VDH Field rep		
<b>Element Group D Leader: OEHS</b>	Group Leader	Responsible for developing the repair funding elements of the project management plan, collaborating with stakeholders as necessary, and meeting communication goals.
SHADAC #1		
SHADAC #2		
VDH Field rep		

### Stakeholder Roles and Responsibilities

Stakeholder	Roles	Responsibilities
SHADAC	Commenter	Responsible for providing feedback on recommendations and interim reports regarding the consumer protection element, the transitional planning element, and the internal procedures and improvement element.
SHADAC	Developer	Responsible for working with Element Group Leader D to develop plan recommendation for the repair funding element.
Local Health Department Staff	Commenter	Responsible for providing feedback on recommendations and interim reports regarding the consumer protection element, the transitional planning element, and the repair element.
Local Health Department Staff	Developer	Responsible for working with Element Group Leader C to develop plan recommendation for the internal procedures and improvement element.

Other tasks

Start and manage interested parties list

SHADAC nominates 8 individuals to work on the Element Groups



Personal relationships that are less than amicable account for some of the instances of non-use; while locally mandated 100% field review in some areas virtually eliminates the necessity in other instances.

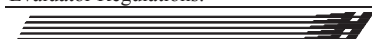
The AOSE regulations did not provide for a financial assurance mechanism because the belief was that such a mechanism would primarily protect AOSEs and the property owners' interests rather than the public health. The belief has remained that, over time, "property owners are likely to be better informed about the potential financial consequences of hiring an AOSE and likely to request and promote a hedge against potential financial losses. Similar to the property owners, AOSEs will likely realize potential risks and have a need for insurance for their own financial protection. Faced by the demand for insurance from property owners and their own need, AOSEs are likely to start offering guaranteed or insured work to their customers. Since the insurance will not eliminate the risks but merely will shift the risks to someone else, both AOSEs and the property owners are likely to pay premiums to insurers in addition to the other associated costs with an application under the AOSE program. In this framework, information is likely to affect the speed of the market's development. For example, if disclosure of information regarding the associated risks in this program to the property owners were required, it would help create demand for insurance and mitigate potential risks faster."<sup>2</sup> This apparently is an element of the current business process that needs additional emphasis. Property owners and AOSEs alike do not have a clear understanding of, nor has a viable market emerged for, financial assurance mechanisms for onsite septic installation and repair. The dissemination of adequate information to AOSEs and the public (property owners) on this topic needs additional emphasis.

The oversight and regulation of AOSEs is important to the business process for obvious safeguard reasons. Allowing the private sector to participate in public health issues requires close observation and enforcement action when there is a violation. Enforcement power over AOSEs resides with the VDH central office, not with the field offices. The field offices generally report violations to the central office in Richmond, who then investigate the matter and begin enforcement procedures if warranted. The central office must maintain the integrity as well as the viability of the AOSE program; consequently, a certain degree of judgment enters into all decision-making regarding any enforcement actions. The field staff, on the other hand, many times expect a zero tolerance approach from Richmond in order to best protect the public health; even though the field staff do not uphold such high standards for their colleagues. A rule of reason needs to be employed here, and some field offices do not seem to make the connection.

Objectives set forth by the division regarding oversight and regulation of the citizenry of Virginia are largely going unmet. These objectives call for the safe operation of septic systems and wells within environmental guidelines. VDH knows that there are unsanitary sewage disposal situations throughout the state, but it does not have the data to quantify the extent. VDH knows that septic systems fail, but it knows the quantity only to the extent that repair permits are requested. The numbers are unknown of those systems that fail and do not get repaired for whatever reason, or that get repaired without the benefit of a repair permit. Data concerning these situations has not been collected, so an educated estimate based on trends and patterns is

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<sup>2</sup> Vol. 18, Issue 2, Virginia Register of Regulations, October 8, 2001, "Proposed Regulations" 12 VAC 5-615-10 et seq. Authorized Onsite Soil Evaluator Regulations.



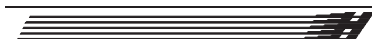
- Work for environmental justice with disenfranchised communities
- Have community-based coalitions that lobby for local environmental health ordinances
- Have a health department staff that is comfortable being engaged with communities.
- Become more effective in engaging community members in environmental health issue identification and problem solving
- Educate communities on the importance of science-based decision making
- Provide state and national policy-makers with community-driven findings that could be used to shape environmental health policies and resource allocation

The New Business Model for VDH should build on what has been established and proved operational by Osaki and *The Future of the Public's Health in the 21st Century*, incorporating the core competencies of Environmental Health developed by the blue ribbon panel assembled by the National Center for Environmental Health, the Centers for Disease Control and Prevention, and the American Public Health Association. The Environmental Health Services at the Centers for Disease Control and Prevention in the Department of Health and Human Services has laid out the road map, and is continuing to improve the effectiveness of establishing, implementing and operating the 10 Essential Services of Environmental Health so that they are fully integrated at the local, state and national levels. This is the foundation on which VDH should build its new business model.

The new vision of the VDH will also include many elements of the current business model. In addition to the core competencies for implementing the ten essential public health services, the agency may need to continue providing the direct services part of the septic permitting process throughout a transitional period, during which it will need to develop a permanent system to provide for the services through unconventional or alternative means. Unconventional, or alternative, means could include subsidized costs to induce the private sector into otherwise unprofitable areas, or providing for the services through other service sectors such as surveyors, etc. Unconventional, or alternative, means would be necessary in circumstances, such as:

- For the indigent in all parts of the state. The indigent will also require subsidized services for repair and for new construction in cases where sanitary systems do not exist.
- For those areas of the state where the private sector has not shown a significant presence. Incentives should be developed to entice the private sector to these areas for a long-term solution to the lack of private services.
- As a safety valve during the transition period to handle overloads on the private sector.

Otherwise, the private sector should be encouraged to handle all applications for certifications and subdivision approvals immediately, followed by a phase-in period to handle “bare applications”. The private sector currently handles applications for alternative systems. The private sector should continue handling applications for both repair and new work. A major repercussion of shifting this work to the private sector will be the likely loss of VDH AOSEs to the private sector. The uncertainty of their role in the new business model of the VDH DOSWS and the lure of a higher salary in the private sector will serve as sufficient enticement to many of those who change employment as a result of this endeavor. Except for those VDH employees



**Observation #2:** Small and rural communities lack access to a competitive private sector market place (according to stakeholders in the rural areas).

Many stakeholders believed small and rural communities lack access to private sector service providers. As such, these communities could not realize the full potential of a legislative mandate to use private sector work. As one stakeholder observed, “there is not a competitive and free market in our county. There is not enough work and the health department is the only competitor.” Unless or until a competitive free market develops in rural areas with lower volumes of work as compared to faster developing regions, a legislative mandate to only use private sector service providers would likely prove ineffective.

Options:

- a. Incentivize the relocation or expansion of the private sector in rural areas to enhance competition and availability. Incentives could include tax credits, reimbursement of education and training expenses, reduction of license fees, or other business grants. In other professions such as nursing, teaching, dental, and medical/physician, students may receive grants and funding if they are willing to work in underserved communities. Licensed professionals also receive benefits if they are willing to relocate businesses to underserved communities. Such incentive programs might increase the number of private sector service providers in rural areas lacking enough private sector service providers.

**Observation #3:** The private sector is unwilling to perform certain services 100 percent of the time according to most stakeholders.

The most profitable work for the private sector is new construction and subdivision development work. Across the Commonwealth, the private sector is already providing more than 70 percent of subdivision and new development work. However, repairing failing sewage systems presents some unique challenges-it is less profitable (or unprofitable), more prone to liability concerns, is associated with a criminal violation, and is subject to significant professional discretion.

Options:

- a. Create funding sources to assist qualified owners in receiving betterment loans or grants when they cannot afford to repair or upgrade their sewage systems. Criteria for qualification would likely include application of the Federal poverty guidelines in some fashion. Such loans or grants should be sufficient to cover the costs of private sector services. Legislation approved

in 2009 (*Va. Code* § 32.1-164.1.2) created the betterment loan eligibility program for owners to seek private lending. To date, no lender has come forward to provide betterment loans. The lack of funding options for repairs and upgrades prevents the speedy resolution of threats to public health and the environment.

- b. Create funding sources to reimburse the private sector for providing unprofitable services.

Funding could come from either private or public sources. Private sources might include creation of a foundation, a volunteer organization, or a non-profit company designed to solicit tax deductible donations. Public source funding could result from changes to the Water Quality Improvement Fund (WQIF), redirecting taxpayer funds historically used to upgrade sewage treatment plants, or the creation of a fund specific to onsite sewage and water services. Such funding would likely have the added benefit of creating community based solutions rather than single point upgrades.

- c. Create a non-profit volunteer organization to provide pro-bono work to people with failing sewage systems in need of repair.
- d. Change the licensing requirements such that licensees would be required to provide a certain amount of pro-bono work. The methods used in the legal profession could be considered as a template.

**Observation #4:** Transitioning services will likely increase the costs to owners who seek onsite sewage services.

Numerous stakeholders who attended the in-person regional meetings believed a legislative mandate to hire private sector service professionals would act against free market forces. These participants believed a mandate to use the private sector would increase the demand for private sector services, while the number of licensed service providers would remain constant. Costs would increase because demand would rise and the supply side would remain flat. Others speculated many private sector service providers would increase rates when customers were required to use them. Nearly 75 percent of septic tank contractors reported on the online survey that private sector costs would slightly increase to significantly increase. Some service providers at the in-person meetings seemed to agree that private sector fees and charges would increase with a mandate to use their services. Other services providers at the in-person meetings disagreed. More than 75 percent of (OSE) designers reported no change or a slight decrease with a legislative mandate to use their services.

When owners hire the private sector, they typically incur two types of charges: the fees charged by the private sector for service delivery and the fees charged by VDH

Figure 4.2: Homeowner Response on Having a Health Department Option

How important is it for you to have the option of getting health department services for site and soil evaluations and designs for wells and sewage systems?		
Answer Options	Response Percent	Response Count
Not important	23.4%	15
Somewhat important	10.9%	7
Important	10.9%	7
Very important	54.7%	35
<i>answered question</i>		<b>64</b>

### Private Sector Ambivalence Regarding Repairs:

Responding to failing sewage systems is a time-critical need. Often, the initial response is by the local health department and considerable amounts of time and resources are expended working with the owner to identify solutions. In cases of failing onsite sewage systems, VDH has an expectation for staff to respond to a customer’s needs within 24 hours. This may not be possible or practical for those working in the private sector.

Figure 5.1: OSE Thoughts on providing free services for repair work:

How often per month would you be willing to provide free services to those who needed to repair a failing sewage system but could not afford your services?		
Answer Options	Response Percent	Response Count
Never	20.9%	10
1	46.5%	20
2	23.3%	10
3	4.7%	2
4	2.3%	1
5 or more	2.3%	1
“Depends on how busy I am” or similar response	25.1%	12
<i>answered question</i>		<b>43</b>

Note: Forty-three (43) respondents had multiple answers to this question.

Following the local health department’s initial review and evaluation, staff sometimes recommend the owner contact a service provider in the private sector because the necessary design will require additional consulting to choose among various proprietary products and services. VDH staff does not recommend or choose specific products because VDH reviews those products, and an inherent conflict of interest exists in selecting products.

Figure 5.2: OSE Work Dedicated to Repairs

What percent of your work is dedicated to repairing failing sewage systems?		
Answer Options	Response Percent	Response Count
less than 10 percent	49.0%	25
10 to less than 25 percent	33.3%	17
25 to less than 50 percent	15.7%	8
50 percent to less than 75 percent	2.0%	1
more than 75 percent	0.0%	0

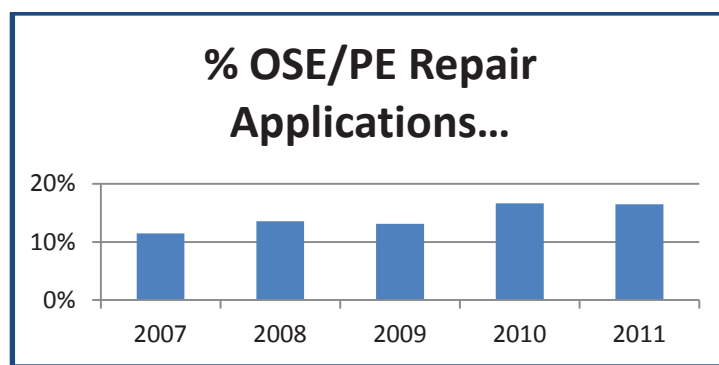
When stakeholders are asked why this amount of work is observed (and not some other number), the responses vary from “this is the kind of work for which clients hire me” to “this is the amount of work one is willing to do.”

Figure 5.3: Reasons for Providing Low Amount of Repair Work

Why do you provide this amount of service for repairing failing onsite sewage systems?		
Answer Options	Response Percent	Response Count
I do not want to do more repair work	3.2%	2
Clients only approach me if the health department can't design a repair system	52.2%	32
Clients are not willing to pay for these services because the service is done free of charge at the health department.	32.7%	20
Repairs require a significant amount of work and have a quick turn-around timeframe.	11.4%	7

Most owners do not initially choose private sector involvement for repairs. As a result, private sector input for repairing failing sewage systems has consistently fallen between 10 and 16 percent over the past five years (see Figure 5.4). Private sector work for other types of requests, such as evaluations pursuant to Va. Code § 32.1-165, is also very limited.

Figure 5.4: Percent of OSE/PE Work, Repairs



## Additional Proposals Considered

The recommendations in this section were discussed by the stakeholder committee and tested for consensus, but failed to garner consensus. (More detailed discussion of concerns and perspectives on each of these can be seen in the online test for consensus and the summary for meeting #5 in Appendix 4.) The proposals in this section were all discussed during the process, but not all members necessarily agreed that each proposal was appropriate or relevant. Therefore these proposals are not part of the consensus recommendations of the SHIFT committee.

### **A. Emergency Repairs: VDH must be able to provide soil evaluation/design in the event of an emergency, when emergency repairs are needed.**

This proposal was seen as critically important by most members of the committee, as a way to ensure that a shift toward the private sector would not compromise access to services or affordability for low-income homeowners.

The proposal did not garner consensus because a few members of the committee did not think that there was adequate definition of what constituted an “emergency,” consideration of whether the reasons for failure warranted support by the VDH, nor an analysis of the private sector’s capacity to accommodate the repairs.

### **B. Other Funds: The VDH should explore the potential use of other funds to assist low-income citizens, such as the Department of Community Development’s Indoor Plumbing Fund, which may also be available to assist people with repairs or required upgrades to existing residences.**

This proposal was seen by most as an important strategy to ensure affordability and access to services for low-income homeowners.

The proposal did not garner consensus because, even after efforts to reword the proposal, one member argued the proposal did not restrict the fund from being used to support development by those who could afford to pay. Suggested changes in the language could not adequately balance the need to assist impoverished people with building their new systems against the need to assure that public funds wouldn’t be used to assist people from building new homes in areas that aren’t truly affordable.

### **C. “Once Touched” Strategy – Mandated Strategy: If a site has ever had a site evaluation/design by the private sector, VDH should no longer accept a bare application for that site and should require that applicant to submit private sector work.**

This proposal was strongly supported by some of the private sector OSE/PE members on the committee. They felt the VDH should cease providing onsite septic services as soon as possible, and that the option of using the VDH should be removed except in very specific circumstances.

This proposal did not garner consensus because a significant majority of the committee did not want to remove the option of the VDH providing services. For more details, see “Core Committee Issues” above.

providers as well as a very limited amount of new construction activity. It contended that the VDH has discretion to make the program work in all regions of the state and has allowed these counties to continue providing services to subdivisions to meet the specific challenges facing these counties and their homeowners and developers. (Letters from Accomack and Scott Counties detailing these challenges were submitted to the SHIFT committee and are included in Appendix F.)

This suite of proposals did not garner consensus because a significant majority of the committee did not want to remove the option of the VDH providing services. Further, some members of the committee felt the Hanover/Chickahominy model worked well because it was instituted during the building boom as a way to address permit backlogs in a high growth area. In regions with different characteristics, this model might not work well, if at all. Other members felt this model was important because it clarified the VDH services available and enabled applicants to make informed decisions about whether to use VDH or the private sector. For more details on the failure to garner consensus, see “Core Committee Issues” above.

**G. Enforcement: VDH should better enforce the requirement that construction permits only be issued when the applicant intends to build within 18 months.**

This proposal was seen as a way to address the disconnect that can occur between the site evaluation and the actual design.

The proposal did not garner consensus because it was seen as being too inflexible given the complex realities of the housing market and government oversight. There were also concerns that it would be impossible to enforce, given that it’s difficult to know what an applicant “intends.”

**H. Unlimited Septic Work: VDH may do as much septic repair work as it deems appropriate. There should be no restrictions on this aspect of onsite septic work.**

The VDH currently performs repairs. Repairs are not considered a highly profitable area of work, yet it is vital that they be done in a timely and professional manner to protect public and environmental safety and health. Initially, no member of SHIFT expressed the need or desire to increase private sector involvement in repairs, and most expressed a strong desire for the VDH to continue this work, which is seen as a public service.

This proposal was seen as a way to ensure that homeowners in all parts of the state will have access to onsite septic repair services. This was felt by many on the committee to be an easy way to maintain the VDH staff technical capabilities; they expressed that most repair work was not profitable and therefore not being sought by the private sector.

The proposal did not garner consensus because of concerns that repairs could become profitable under certain circumstances and should be available to private sector providers who wish to provide them.



**I. Exemptions Quota: Repair applications should count toward a locality's quota of (X) permits a month under the "exemption options" above.**

This proposal was seen as a way to make sure that, under the mandated or targeted policy proposals, the most amount of work possible would be sent to the private sector. VDH should not take on more than a specified amount of work.

This proposal did not garner consensus, for the same reasons that the mandated or targeted policy proposals failed: a number of members were not willing to eliminate the option of using VDH services.

**J. Fees for Repairs: Repair applications should be means-tested and some repairs to some properties should have fees associated with them.**

This proposal was seen as a way to ensure that the VDH would not be performing work for people who could afford to pay the private sector. This would ensure effective stewardship of public funds, and also of any additional funds used to assist low-income homeowners.

The proposal did not garner consensus because a fundamental disagreement emerged between those advocating that some repair work have associated fees and those who believing that all repairs should be free to protect public health and the environment.

**K. Independent Review Expectations: When the VDH performs onsite septic work, for quality assurance they will be subject to Level 2 reviews equivalent to and at the same percentage of private OSEs. Specifically, a Level 2 review will be conducted by an independent source, such as Virginia Tech extension agent, or equivalent. Therefore, if a local jurisdiction requires OSE/PE work to have 100 percent level 2 reviews, then VDH staff will have 100 percent Level 2 reviews.**

This proposal stemmed from a concern that the VDH is not providing sufficient oversight of its staff and that its staff does not always perform up to the desired professional standards. Some members expressed that VDH should not be providing regulatory oversight of its own staff. This proposal would ensure adequate and independent oversight.

The proposal did not garner consensus because of unresolved questions about where funding would come from and whether there is staff capacity to implement this proposal.

**L. Oversight: When VDH OSEs don't meet the new established expectations, VDH should still be expected to enforce civil penalties, as it does for private OSEs.**

This proposal stemmed from a concern that the VDH is not providing sufficient oversight of its staff and that its staff does not always perform up to the desired professional standards. This proposal would ensure parity of expectations and treatment between private sector OSEs and VDH staff OSEs.

The proposal did not garner consensus because some considered it vague and others were resistant to making recommendations on the VDH's internal personnel policies.