

**Virginia Department of Health
Sewage Handling and Disposal Advisory Committee (SHADAC)**

Date: May 11, 2018
Time: 10 am to 2 pm
Primary Location: James Madison Building
5th Floor Main Conference Room
109 Governor Street
Richmond, Virginia 23219

SHADAC Members

Mike Lynn, Chairman – Home Builders Association of Virginia
Adam Feris – Virginia Environmental Health Association
Joel Pinnix – American Council of Engineering Companies of Virginia
Shaun McGuigan – Manufacturer (sitting in for Colin Bishop)
Alan Brewer – Virginia Association of Counties
Morgan Kash – Virginia Association of Professional Soil Scientist (sitting in for Bill Sledjeski)
Curtis Moore – Virginia Onsite Wastewater Recycling Association
Valerie Rourke – Virginia Department of Environmental Quality
Channing Blackwell – Virginia Society of Professional Engineers
Lance Gregory – Virginia Department of Health

VDH Staff and Members of the Public

| | | | |
|--------------|------------------|----------------|--------------|
| Becky Golden | T. Pettis (DPOR) | Jim Slusser | Bob Marshall |
| Michele Ruff | Mike Burch | Anthony Creech | Ray Tighe |

Called to order: 10:02
Roll Call – quorum met

Administrative

1. Welcome. (5 minutes)

Chairman Lynn welcomed the committee members, VDH staff, and the public to the meeting.

2. Approve agenda. (5 minutes)

Mr. Moore moved to approve the agenda.

Mr. Feris seconded the motion.

All members were in favor of the motion.

3. Review summary from November 8, 2017 meeting. (5 minutes)

Mr. Moore moved to approve the agenda.

Mr. Feris seconded the motion.

All members were in favor of the motion.

Public Comment Period

Mr. Marshall comment on several concerns. First, he raised concerned about the well driller portion of House Bill (HB) 888. He asked how the committee thinks things will be handled, adding he doesn't believe drillers should be able to call VDH to perform sanitary surveys for designs by well drillers. Second, he raised concern with a recent policy change allowing the transfer of permits to new owners, which he saw as a violation of his contractual obligation with clients. Last, he raised concern that local health departments are not certifying their work and letting unlicensed people do the work.

Mr. Slusser: Ask whether the SHADAC can request operation and maintenance reports from the Commissioner. He believes data is missing in reports from VDH online and commented that VDH needs to have more accurate data.

Standing Agenda Items (20 minutes)

1. Issues related to internal VDH policies and processes. (10 minutes)

i. Operation and maintenance, alleged violations, and private sector reporting.

Mr. Gregory noted that there are questions from the private sector about what information must be reported for operation and maintenance (O&M), and what reports will trigger a notice of alleged violation (NOAV) from VDH. He asked the committee for input on how to best to set a bright line for what triggers an NOAV.

Mr. Moore suggested asking two question on the O&M reports; one regarding whether something mechanical is broken, and a second question as to whether the system meets the treatment limits.

Mrs. Rourke commented that if considering a limit that may trigger a violation, whether any thought has been given to a value that would trigger corrective action. VDH takes corrective action and then it might be a violation.

Chairman Lynn raised concern that an operator may be doing everything they can do, the system is mechanically working, the system is an approved system, but the system still is not meeting the treatment limits; no fault of the owner or the operator.

Mr. McGuigan commented that products are approved for treatment level 2 (TL-2) based on testing. One grab sample doesn't make the determination, testing is based on composite sampling. If you have an approved product in Virginia, a grab sample is different from the

composite sample for approval. Using a single grab sample for enforcement would go against the approval for the product.

Mr. Pinnix commented that as a licensed operator he pulls one sample. Another sample is not collected for another for 5 years. He added that operators have to make a judgement call when they are out on the site. Additionally, the homeowner is not willing to spend a lot of extra money. Mr. Pinnix stated that saying an operator cannot make a judgment call based on color and odor is an ignorant statement from VDH, and that VDH is trying to apply big pipe program to small pipe systems.

Mr. Brewer asked whether Mr. Pinnix was saying sampling could be used as an assessment of the function of the system, but not be used to determine whether the system is compliant with the regulations and there is no number that should trigger a violation.

Mr. Moore comment that he believes that was the intent of the samples, to give VDH a big picture view and give the operators a barometer of where the system stands. He recommend that sampling is not a compliance point. He added that he doesn't think every visit to the property should be reported.

Mr. Pinnix commented that it is up to the operator whether they submit a report.

Chairman Lynn asked if a licensed operator is on a property not because of a VDH required visit and they find problems, is the visit a reportable incident.

ii. Minimum design criteria for simple repairs and voluntary upgrades.

Chairman Lynn asked what would be required for submission from private sector designers for simple repairs. He noted that as VDH stops doing repair permits there is nothing in Guidance Memorandum and Policy (GMP) 2017-02 about the difference between a tank replacement and a full blown repair. Should there be a different standard.

Mr. Pinnix commented that related to construction permits, there are certain statutory requirements. One requirement is a plat or a waiver. Think there are instances where the waiver makes more sense, like replacing a tank. Problem is that the waiver is so burdensome that it is easier to get a copy of the plat. VDH needs to look at that, not user friendly.

Mr. Marshall commented that as an operator he is concerned about distribution box replacements that will be changed with no history of what happened on the site.

Chairman Lynn commented that VDH had hoped that reporting requirement would pass at the same time; need to get to the installers and operators to get them to voluntarily report what they do.

Old Business (25 minutes)

1. AOSS Regulations revision process update. (5 minutes)

Mr. Gregory informed the committee of VDH's current work to revise the Regulations for Alternative Onsite Sewage Systems. Dr. Marcia Degen and Karri Atwood are currently conducting listening sessions around the state to provide stakeholders with an opportunity to provide feedback on initial draft revisions. VDH plans to submit a Notice of Intend Regulatory Action for the regulations in October.

Mr. Pinnix noted that in the minutes for the previous committee meeting there was a vote for a policy for the direct dispersal regulatory change.

Mr. Gregory commented that VDH would work on issuing a policy by the end of year.

Mr. Pinnix commented that a policy in 2017 included a NOAV letter template that is a kinder gentler letter for self reporting repairs. Mr. Pinnix commented that one of his clients received the wrong NOAV which bothered him so much he had a medical condition. He stated that VDH needs to implement policies and form letters. Mr. Pinnix suggested that VDH not send out an NOAV if the owner self reports a failure; should be a last resort.

Chairman Lynn commented that he would like to see summary of comments on the draft revisions.

Mr. Moore stated it would be helpful to understand why a change is being made, and how many people made the comments.

2. SB 1577 Report. (20 minutes)
 - i. Stakeholder concerns.

Mr. Pinnix stated that he takes issue with item number two on page four in the report. He believes that item is a false statement, that the data is taken out of context, and that the report is saying that operators are improperly reporting 90% of the time. Mr. Pinnix commented either the unit is operating in accordance with requirements, the unit is broken but fix, or the unit is broken. The regulations say VDH must have something other than just a non-complying lab test to say the unit is not working. VDH can't say a system is noncompliant based a bad sample. Mr. Pinnix noted he asked the Commissioner to rescinded report and he made report to WWWOSSP Board. He is waiting on a response.

Mr. McGuigan commented that systems are approved based on testing. When an operator does a report they are basing it on site and smell. He agreed with Mr. Pinnix.

Mr. Brewer ask what the mechanism would be if VDH decided to revise the report.

Mr. Ferris stated that in reading the report, he is of the mind that a single grab sample doesn't work. He suggested more sampling than the five year sampling.

Mrs. Rourke commented that using just smell and odor is subjective which is a problem with trying to determine whether the system is operating properly. However, using a sample once every five years is not very representative; need to ask for more sampling.

Mr. Pinnix commented that VDH should have had 6,000 samples, but report only having 1,600; 15% compliance.

Chairman Lynn added that he agrees with Mr. Pinnix. He stated that he agrees that a system can be working and still get a bad grab sample; bad equal NOAV, good equal no action, fixed equals no action. Think bad grab sample means nothing. Would like a motion from committee to revise the language in the policy.

Mr. Pinnix mad a motioned to request VDH to strike item number two from page four. Mr. Brewer seconded the motion to open discussion.

Mr. Brewer asked if the item is deleted, does that really show what the stakeholders expressed.

Mr. Pinnix stated he was at every meeting prior to the report and there were very few people at those meetings.

Mr. Feris stated that he disagrees with the assessment of the statement. He read it that what you smell is not what comes out on a lab sample.

Chairman Lynn commented that to draw that conclusion you'd have to say that an operator said the smell was good, and then disregarded the sample results.

Mr. Burch commented that the original intent of the bill which prompted the report was to come up with a rational for the 180 day sample.

Mr. Brewer asked whether it be more appropriate to revisit the response, rather than to strike the comment.

Vote on the motion:

Yea – Chairman Lynn, Mr. Kash, Mr. Moore, Mr. Pinnix, Mr. McGuigan.

Na – Mr. Feris, Mr. Blackwell.

Abstention – Mr. Brewer, Mrs. Rourke.

New Business (50 minutes)

1. Legislative Update (10 minutes)

Mr. Gregory provided a brief update on several bills from the 2018 General Assembly that impact the onsite sewage and water supply program.

House Bill 192, signed by the Governor on April 18th, requires VDH to establish regulations for graywater and rainwater harvesting. Mr. Gregory noted that VDH currently has guidelines in place for each. OEHS will discuss development of regulations with the SHADAC later in 2018.

Mrs. Rourke commented that in state water control law there are provisions for the Department of Environmental Quality (DEQ) to develop regulations for the reclamation of stormwater.

House Bill 358, also signed by the Governor, requires subdivisions with 30 or more lots in a ground water management area that will be served by private wells to receive an evaluation from DEQ prior to final approval. OEHS staff will share more information with the SHADAC will share more information for implementation as it become available from DEQ.

House Bill 885, a VDH agency bill, did not pass and was continued to 2019. The hope was for House Bill 885 to work along with House Bill 887 to allow VDH to require reporting of conventional onsite sewage system operation and maintenance.

2. House Bill 887 Implementation (40 minutes)

Mr. Gregory then discuss House Bill 887 which was signed by the Governor. The clarifies that maintenance does not require a permit from VDH, but may require a local permit by local ordinance. The bill revises the definition of maintenance to include in-kind replacement of sewer lines, conveyance lines, distribution boxes, and header lines. The bill does not include tanks, drainfield piping, or subsurface drainfields in the definition of maintenance. A Governors amendment clarifies that onsite sewage system installers can also replace light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.

Mr. Gregory commented that OEHS hopes to develop a policy implementing HB 887 by June 30, 2018. The key points are to clarify what is allowed as maintenance that previously required a permit, and clarify that a permit may be required by local ordinance. He then asked the committee for their thoughts on requesting voluntary reporting of conventional onsite sewage systems (COSS).

Mr. Feris commented that if an installer does the work, nobody knows about it. He recommended providing installers access to the online reporting tool.

Mr. Moore asked whether there was anything that prohibits VDH from saying that reports need to be submitted for COSS. He added that VDH may not have an enforcement for COSS reporting.

Mr. Marshall commented that VHD needs to at least have the license number.

Mr. Blackwell commented that Fairfax requires reporting.

Mr. Brewer commented that the goal is to get information into VDH's system, and that reporting should be as easy as possible.

Mr. Pinnix commented that VDH is in control of the permit process and could have made the process for simple improvements as fast-track as the agency wanted. VDH chose not to go down that path, and choose to exempt this category of work from getting a permit.

Mr. Blackwell commented that localities may add teeth to VDH policy.

Mr. Moore asked whether VDH can you incentivize reporting.

Mr. Blackwell suggesting making reporting part of installers training for licensure.

Mr. Feris comment that whatever installer provide VDH should accept.

Mr. McGuigan suggested asking for where, when, and what; needs to be simple.

Mr. Pinnix asked why VDH would pay for state staff to implement local ordinance that go beyond state regulations.

Mr. Moore commented that language doesn't say you can't require a construction permit, think VDH could always go back and require a permit.

HB 888:

Mr. Gregory then discussed various aspects of HB 888 which has been signed by the Governor. Those aspects include:

- Accepting evaluations and designs for private wells from well drillers.
- Transitioning voluntary upgrades, certification letters, subdivision evaluations, and new construction not for a principal place of residence.
- Developing hardship guidelines.
- Public outreach and education regarding transition of services and possible new fees.
- Developing a petition for VDH direct services.
- Implement the transition of new construction, repair, and safe, adequate, and proper (SAP) services, with VDH as provider of last resort.

Regarding accepting private well designs from well drillers, Mr. Gregory comment that he anticipated a policy by June 30th that would establish the same requirements for designs for well drillers as would be required for designs from onsite soil evaluators (OSE) and professional engineers (PE). He asked the SHADAC for their thoughts on situations where an OSE or PE completes a onsite sewage system design and a well driller submits the well design.

Mr. Feris commented that every OSE/PE signs a certification statement and that he would like to see a similar statement signed from a well driller. He also recommended that OSE/PE requirements in Guidance Memorandum and Policies (GMP) 2017-01 apply to well drillers.

Mr. Moore said he supports requiring the same thing as required for OSEs and PEs.

Mr. Pinnix commented that the site plan is determined by VDH, and that driller also have to include the addendum about agricultural properties.

Mr. Gregory asked the SHADAC for their thoughts on situations where an OSE or PE completes a onsite sewage system design and a well driller submits the well design.

Mr. Moore suggest VDH act on the applications in the order in which they are received.

Mr. Feris agreed.

Mr. Moore commented that as a matter of policy, VDH may want to call owner. He added that VDH may not have legal authority to deny a onsite sewage system application if it doesn't have a well site.

Mr. Brewer commented that he did not see where the legislation changes anything as the same scenario could happen with two OSE's.

Mr. Moore commented that if VDH has an active well permit and the well location is moved, may need to void initial permit if it interferes with a proposed system.

Mr. Pinnix commented that is bothers him that a well driller will impact someone else's property. He said he tries to site a well so that it does not encroach on another property. He also ask why it cost more to get a well permit than a septic permit.

Mr. Blackwell commented that he is concerned about drillers doing a designs; need to have a buffer between the person doing the work. He added that water is the most precious public health issue and that VDH needs to have strenuous oversight.

Mr. Marshall commented that a PE is training to do well siting, do a drawing.

Mr. Gregory next discuss the transition of voluntary upgrades, certification letters, subdivision evaluations, and new construction not for a principal place of residence to the private sector on July 1, 2018. He added that a key point of discussion for the policy for transition these services is the meaning of the term "principal place of residence".

Mr. Pinnix commented if the applicant checks the box on the application as being a principal place of residence, VDH should do the work. The SHADAC generally agreed with the comment, noting issues with making a case decision that a property would not serve as a principle place of residence.

Mr. Gregory noted that one of the most critical components of HB 888 would be the development of hardship guidelines that would allow owners to petition VDH for services. Mr. Gregory commented VDH needs to post draft hardship guidelines for stakeholders to review by November 1st. He added that the guidelines need to address availability of service providers, cost of services, and disciplinary actions.

Mr. Brewer suggested building hardship around where it is likely to exist.

Mr. Pinnix asked whether VDH would implement a once touched policy, adding he believe VDH could voluntarily stop doing once touched designs (applications where there is previous work on file from a private OSE/PE). He also asked where the incentive would be to use the private sector given the hardship guidelines. He commented that the Authorized Onsite Soil Evaluator Regulations are still in existence; the licensure part doesn't apply, but other parts still apply.

Chairman Lynn commented that he would like an answer from the Attorney General or Commissioner; can one OSE/PE use another OSE/PEs design on file at the local health department.

Mr. Blackwell asked why worry about anything other than economics.

Mr. Slusser asked what happens when staff go before DPOR, if they lose their license. Aaron Bess, private OSE was the first to lose her license.

Chairman Lynn commented that the feeling of the committee is that income is the only significant hardship.

Adjourned

**Virginia Department of Health
Sewage Handling and Disposal Advisory Committee (SHADAC) Meeting
Agenda**

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109 Governor Street
Richmond, Virginia 23219

Administrative (15 minutes)

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2. Approve agenda. (5 minutes)
3. Review summary from November 8, 2017 meeting. (5 minutes)

Public Comment Period

Standing Agenda Items (20 minutes)

1. Issues related to internal VDH policies and processes. (10 minutes)
 - i. Operation and maintenance, alleged violations, and private sector reporting.
 - ii. Minimum design criteria for simple repairs and voluntary upgrades.

Old Business (25 minutes)

1. AOSS Regulations revision process update. (5 minutes)
2. SB 1577 Report. (20 minutes)
 - i. Stakeholder concerns.

Break (10 Minutes)

New Business (50 minutes)

1. Legislative Update (10 minutes)
2. House Bill 887 Implementation (40 minutes)

Break (10 minutes)

New Business Continued (60 minutes)

3. House Bill 888 Implementation (60 minutes)
 - i. Private wells and master water well system providers. (20 minutes)
 - ii. Services not associated with a building permit or repair. (10 minutes)
 - iii. New construction services not for a principal place of residence. (30 minutes)

Break (10 minutes)

New Business Continued (40 minutes)

3. House Bill 888 Implementation Continued (40 minutes)

- iv. Hardship guidelines. (30 minutes)
- v. Petition for services. (10 minutes)

Adjourn

DRAFT

VDH Onsite Sewage and Water Programs: HB 887 and 888 Listening Session

Lance Gregory

Director

Division of Onsite Sewage and Water Services,
Environmental Engineering, and Marina Programs

Virginia Department of Health

(804) 864-7491

Purpose

- Highlight bills that impact the onsite sewage system and private well programs.
- Discuss VDH implementation plans.
- Receive feedback from you.

HB 887

“Maintenance means, *unless otherwise provided in local ordinance*, (i) performing adjustments to equipment and controls or (ii) in-kind replacement of normal wear and tear parts *that do not require a construction permit for adjustment or replacement of the component* such as light bulbs, fuses, filters, pumps, motors, *sewer lines, conveyance lines, distribution boxes, header lines*, or other like components. “Maintenance” includes pumping the tanks or cleaning the building sewer on a periodic basis. *Notwithstanding any local ordinance, “maintenance” does not* include replacement of tanks, drainfield piping, *subsurface drainfields*, or work requiring a construction permit and installer. *Unless otherwise prohibited by local ordinance, a conventional onsite sewage system installer or an alternative onsite sewage system installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.*

HB 887

- Doesn't require a VDH permit.
- Local ordinance can require a local permit.
- Adds sewer lines, conveyance lines, distribution boxes, and header lines.
- Does not include tanks, drainfield piping, or subsurface drainfields.
- Installers can replace light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.

HB 888

- 7/1/2018
 - Private well evaluations by master water well system providers.
 - Cease services not associated with a building permit or repair.
 - Cease new construction services not for a principal place of residence.
- 11/1/18
 - Post draft hardship guidelines on VDH website.
- 7/1/2019
 - Establish final hardship guidelines.
 - Require petition for services; income or hardship eligibility.
- 7/1/2023
 - Services only to applicants demonstrating a hardship.

Draft Implementation

HB 887 – Implementation Plan

- Provide policy to implement the change in definition.
- Deadline: June 30, 2018.
- Key Points:
 - What HB 887 allows as maintenance that previously required a permit.
 - Clarify that permits may still be require pursuant to local ordinance.
- Your thoughts: Voluntary maintenance reporting for COSS.
 - Using existing system evaluation form.

HB 888 – Implementation Plan

- Policy for accepting evaluations and designs for private wells from well drillers.
- Transition voluntary upgrades, certification letters, subdivision evaluations, and new construction not for a principal place of residence.
- Develop hardship guidelines.
- Public outreach and education regarding transition of services and new fees.
- Develop petition for VDH direct services.
- Policy/process to implement transition of new construction, repair, and SAP services, with VDH as provider of last resort.

HB 888 - Implementation Plan

- Policy for accepting evaluations and designs for private wells from well drillers.
- Deadline: June 30, 2018
- Key Points:
 - Outline requirements for private well evaluations and designs from well drillers.
 - Outline how well only designs from well drillers will be handled for properties where a septic only design is submitted by an OSE/PE.

HB 888 – Implementation Plan

- Transition voluntary upgrades, certification letters, subdivision evaluations, and new construction not for a principal place of residence.
- Deadline: June 30, 2018
- Key Points:
 - Specify that all applications for voluntary upgrades, certification letters, subdivision evaluations, and new construction not for a principal place of residence must be accompanied by private sector work.
 - Clarify the meaning of the term “principal place of residence”.
 - Develop and post outreach material.

Where do we draw the line for principal place of residence?

- Third party applying on behalf of the ultimate owner (e.g. contractor, realtor, builder).
- Building a home for a family member, that will use the home as a principal place of residence.
- Spec homes.
- Rental property.
- Vacation home.

HB 888 – Implementation Plan

- Develop hardship guidelines.
- Deadline: November 1, 2018 (draft); July 1, 2019 (final).
- Key Points:
 - Availability of service providers. (3, 5, 10?)
 - Mechanism for determining availability.
 - Cost of services. (1.5x average, 2x average?)
 - Mechanism for determining cost.
 - How disciplinary action factors into hardship determinations.
 - Should VDH provide AOSS evaluation and design services.
 - Other concerns?

HB 888 – Implementation Plan

- Public outreach and education regarding transition of services and new fees.
- Deadline: January 1, 2019
- Key Points:
 - Notify the public of the transition.
 - Proposed budget includes fees for repairs, voluntary upgrades, and SAP.

HB 888 – Implementation Plan

- Develop petition for VDH direct services.
- Deadline: June 30, 2019
- Key Points:
 - How VDH determine income eligibility.
 - How VDH determines hardship (e.g. reference to hardship guidelines).
 - Create petition form.

HB 888 – Income Eligibility

| Family Size | 400% FPG 7/1/19 to 6/30/20 | 300% FPG 7/1/20 to 6/30/21 | 200% FPG 7/1/21 to 6/30/22 | 100% FPG 7/1/22 to 6/30/23 |
|--------------------|---|---|---|---|
| 1 | \$48,560 | \$36,420 | \$24,280 | \$12,140 |
| 2 | \$65,840 | \$49,380 | \$32,920 | \$16,460 |
| 3 | \$83,120 | \$62,340 | \$41,560 | \$20,780 |
| 4 | \$100,400 | \$75,300 | \$50,200 | \$25,100 |
| 5 | \$117,680 | \$88,260 | \$58,840 | \$29,420 |
| 6 | \$134,960 | \$101,220 | \$67,480 | \$33,740 |
| 7 | \$152,240 | \$114,180 | \$76,120 | \$38,060 |
| 8 | \$169,520 | \$127,140 | \$84,760 | \$42,380 |

HB 888 – Implementation Plan

- Policy/process to implement transition of new construction, repair, and SAP services, with VDH as provider of last resort.
- Deadline: June 30, 2019
- Combines policies, outreach materials, forms, and hardship guidelines into a comprehensive implementation policy for HB 888 transition.

VIRGINIA ACTS OF ASSEMBLY -- 2018 RECONVENED SESSION

CHAPTER 830

An Act to amend and reenact § 32.1-163 of the Code of Virginia, relating to onsite sewage systems; maintenance.

[H 887]

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-163 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-163. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Alternative onsite sewage system" or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Betterment loan" means a loan to be provided by private lenders either directly or through a state agency, authority or instrumentality or a locality or local or regional authority serving as a conduit lender, to repair, replace, or upgrade an onsite sewage system or an alternative discharging sewage system for the purpose of reducing threats to public health and ground and surface waters, which loan is secured by a lien with a priority equivalent to the priority of a lien securing an assessment for local improvements under § 15.2-2411.

"Conduit lender" means a state agency, authority or instrumentality or a locality, local or regional authority or an instrumentality thereof serving as a conduit lender of betterment loans.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Licensed onsite soil evaluator" means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.

"Maintenance" means, *unless otherwise provided in local ordinance*, (i) performing adjustments to equipment and controls ~~and~~ or (ii) in-kind replacement of normal wear and tear parts *that do not require a construction permit for adjustment or replacement of the component* such as light bulbs, fuses, filters, pumps, motors, *sewer lines, conveyance lines, distribution boxes, header lines*, or other like components. "Maintenance" includes pumping the tanks or cleaning the building sewer on a periodic basis. ~~Maintenance~~ *Notwithstanding any local ordinance, "maintenance" shall* does not include replacement of tanks, drainfield piping, ~~distribution boxes~~ *subsurface drainfields*, or work requiring a construction permit and installer. *Unless otherwise prohibited by local ordinance, a conventional onsite sewage system installer or an alternative onsite sewage system installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.*

"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process at a treatment works.

"Operation" means the biological, chemical, and mechanical processes of transforming sewage or wastewater to compounds or elements and water that no longer possess an adverse environmental or health impact.

"Operator" means any individual employed or contracted by any owner, who is licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, monitor, and maintain an alternative onsite sewage system.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower,

bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Transportation" means the vehicular conveyance of sewage.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

VIRGINIA ACTS OF ASSEMBLY -- 2018 RECONVENED SESSION

CHAPTER 831

An Act to direct the Department of Health to take steps to eliminate evaluation and design services for onsite sewage systems and private wells provided by the Department.

[H 888]

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1. § 1. *The Department of Health (Department) shall take steps to eliminate evaluation and design services provided by the Department for onsite sewage systems and private wells. In taking such steps, the Department shall:*

1. Beginning July 1, 2018, accept private evaluations and designs for private wells, in compliance with the State Board of Health Regulations for construction of private wells, designed and certified by a certified master water well system provider pursuant to § 54.1-1129.1 of the Code of Virginia;

2. Beginning July 1, 2018, cease providing onsite sewage system evaluations and design services that are not associated with a building permit or the repair of a failing sewage system. Hardship exceptions shall not apply to these services;

3. Beginning July 1, 2018, cease providing new construction evaluation and design services for an application that is not for a principal place of residence. Hardship exceptions shall not apply to these services;

4. By July 1, 2019, establish guidelines to maintain the Department as a provider of last resort for a property owner who demonstrates a specific hardship in obtaining private sector evaluation and design services associated with a building permit or the repair of a failing sewage system that is for a principal place of residence. In developing such guidelines, the Department shall solicit and consider input from stakeholders. The Department's guidelines shall include considerations for hardships based on (i) the availability of properly licensed service providers working within a locality or region, (ii) the disciplinary history of private sector providers, and (iii) the cost of private sector services. The Department shall post its proposed guidelines on a website maintained by the Department by November 1, 2018;

5. Beginning July 1, 2019, require an applicant for an onsite sewage system or private well construction permit who desires the Department to provide evaluation and design services associated with a building permit or the repair of a failing sewage system that is for a principal place of residence to petition the Department to provide such evaluation and design services; and

6. Beginning July 1, 2019, (i) require means testing of applicants who petition the Department for evaluation and design services for onsite sewage systems and private wells and who are unable to demonstrate a hardship and (ii) provide evaluation and design services only to such applicants whose household income does not exceed 400 percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services. The Department shall reduce such income threshold to 300 percent beginning July 1, 2020, 200 percent beginning July 1, 2021, and 100 percent beginning July 1, 2022. Beginning July 1, 2023, the Department shall provide design and evaluation services only to an applicant who demonstrates a hardship in accordance with guidelines developed by the Department.

§ 2. *The Department shall coordinate with the Department of Professional and Occupational Regulation to establish any necessary agreements or procedures to ensure that potential violations of laws or regulations regarding onsite sewage system and private well evaluation and design are referred to the appropriate agency or board for review.*