

Alternative Discharge Regulations Technical Advisory Committee – Meeting Minutes

June 10, 2011

Committee members present: Rick Blackwell (VSPE); Bob Lee (VOWRA); Ted McCormack (VACO); David Wachsmann (VEHA); Bob Marshall (VDH); Peter Basanti (VDH); Burt Tuxford (DEQ); Ed Gorski (PEC) Marcia Degen (VDH) chairperson

Others attending: Chris Beatley, Premier Tech; Peter Brooks (PMBA); Todd Borden (Borden Engineering); Jim Bowles (VDH- OEHS); Peter Basanti (VDH-OEHS).

Meeting opened at 10 am.

Ms. Degen presented ground rules for the TAC :

- Meetings are open to the public and subject to FOIA
- Meetings will be posted on Town Hall website at least seven days prior
- Meetings will not be recorded, but notes will be taken and minutes will be posted to Town Hall
- Committee will have opportunity to approve the minutes before posting
- An opportunity will be provided for non-committee members to comment during the meetings

Additional comments about the process:

- TAC makes recommendations to board. Striving for consensus.
- RB: will we be able to review a final document beforehand? Sometimes consensus is broken by the time the final document is produced. MD – yes we will be working to build the reg as we go.
- Administrative enforcement changes to conform to the APA.
- Goal is to present revisions to the Board of Health at the Board's September meeting.

Key aspects of the current regulation include:

- Adopted in 1992
- Regulation only applies to single family home discharges to surface waters
- Works in concert with the DEQ General Permit for municipal discharges < 1000 gpd (the VDH regulations only address single family homes with a volume ≤ 1000 gpd)
- Cannot discharge without the DEQ permit.
- Cannot obtain a discharge permit unless there is no onsite solution
- May utilize for a failing system even if site does not meet all requirement
- VDH reviews for siting compliance, inspects, enforces, issues permits and reviews plans,
- Provides a process for advancing treatment unit designs through experimental, preliminary and general approval with reductions in monitoring as one advances – same as SHDR
- Classifies discharge points as "dry ditch", "intermittent stream" or "all weather stream"
- Requires a maintenance and monitoring contract (requirement is included in the Code of Virginia)
- Requires both formal and informal monitoring

Comment: The general permit from DEQ is only issued after VDH has reviewed and found a suitable discharge site

Ms. Degen summarized the current NOIRA:

- Addresses housekeeping issues
- Modify technology references that are outdated
- Modify for consistency with current authorities, policies, regulation and law

- Consider wetlands as a discharge category and develop design standards for them
- Modify who can operate: Class IV has been problematic for some rural areas.
- Consider modification to address Bay TMDL
- Consider use of civil penalties and corrective action plans for enforcement

The committee, with some comment from guests, discussed what works and what may not be working well in the current regulations:

- Requirement for O&M contract—waiver may allow homeowner to operate system. DEQ will be modifying the general permit. Rick comments: this change in policy is upsetting homeowners. Difference between AOSS and Alt. Discharge regs in contract requirements
- Consider opening O&M to Onsite Operators.
- How many in state? Around 2300 small discharges, most single family homes.
- Permit never goes away if not installed? VDH working on issue with DEQ to make sure that databases match.
- Treatment unit approval process is long and convoluted. Reality is that the process has not been followed.
- Lot of inconsistency among districts in terms of procedures.
- Gives people an opportunity for poor, rural people to live on (family) land where they can't get onsite permit. Routine operation can be a problem (e.g., disinfection working) with cost. O&M important, needs to be cost effective. Can LHD do periodic inspections to ensure proper operation?
- Seems to be lack of communication between LHD and state.
- One primary problem is disinfection part—in past typically chlorination, don't function properly over time. Chlorination/dechlorination toxic, not effective.
- Need for online sampling requirements.

How does 32.1-163.6 fit in with these regulations? This issue needs some research. Over-arching point, though, is that this is a DEQ permit. Thought was that if any VDH regulation, falls under "engineering law."

Ms. Degen asked the committee to address several issues individually as outlined in the handout and agenda.

Issue #1: Section 30 C. Before the discharge option becomes available, VDH has to certify that no other onsite solution is available. Right now, this encompasses SHDR and does not extend to the Emergency Regulations governing Alternative Onsite Systems, which would reduce the required horizontal separation distances and allow a wider range of soil and site conditions to be used for onsite systems. Should this be extended to E-Regs or successor? There is an economic factor: the cost between a 163.6 system and a discharge system is extremely nontrivial. Should we allow alternative discharge systems if prescriptive regulations are not complied with or should we consider AOSS/163.6 before enabling the discharge option?

- The issue is permissive—there is another option (pump and haul).
- What's the purpose of requirement? Risk? Is discharge system a greater risk?
- Anything that's mechanical may not be properly maintained. That's a risk factor.
- Assumption is that intent is to eliminate discharges.
- Current regulatory environment is that if really bad soils, looking at TL3 for onsite system. Requirement for treatment is (may be) less for discharge system. Onsite system is held to a much higher standard. Risk seems backwards.

- Each property lends itself to one option or another. PE needs to determine risk to public health and decide whether it should be in soil or discharge. Option should be up to engineer.
- Have to consider multiple discharges. If you group discharges, a bigger potential risk than looking at a single discharge.
- Also needs to consider stream criteria. Does DEQ have criteria for limiting number of discharges.
- Under current scheme, the general permit is done without looking at individual sites. This limits the risks because doorway is narrow.
- Onsite systems may be less risky—e.g., soil media helps if, e.g. disinfection fails.

Question: given AOSS regulations, does anyone believe that there is any property for which an onsite system cannot be designed? Given an infinite amount of money, no. Disagree from some: some sites are not suitable for onsite system.

What if we limited to non-163.6 system? Would allow TL2 or TL3 for onsite, but no further reduction to limiting feature. One comment: a good dividing line; public is protected but gives engineers some flexibility. Would also limit to onsite systems in which we have more confidence.

There is also a variance procedure that could get to the same point, for economic consideration.

What is the cost differential between onsite and discharge system? The dispersal field generally represents the added cost of onsite. Maintenance cost differentials are minimal.

Could you live with a dividing line of up to, but not including, a 163.6 system?

Would this require consideration of, for example, a conditional permit for reduced flow for a repair permit? Do we need language to address that issue?

Committee agreed that Marcia would work on language to better define limits with the concept of going up to TL2 and TL3 effluent quality, but limiting it to site conditions that would only require TL2. Consideration of reports from private sector to assess sites.

Issue #2: Permit issues. Modifications to 12 VAC 5-640-220.

Section A: modify the date (remove `after July 30, 1992`).

Section B: Should the regs require demonstration of a contract before a permit is issued? Can we refer back to what is in currently section 500 (maintenance)? Committee noted that there is a difference between "start up" and "inspection".

Section C: Construction permits are valid for 54 months. Should they be valid for 18 months to agree with onsite sewage disposal system permits?

- automatic renewals for systems that have been installed, operating properly without any change in ownership. If you do not install by the time the GP comes in, August 2nd, then they are now subject to the new conditions.
- usually onsite fees are rolled over for discharge because it's the last disposal resort.
- no problem with them having to fill out application, but paying a new fee would be problematic.
- the other problem is that they will have to change construction to meet the new conditions.

- Why are we putting this expiration date in? Whether or not it expires, if standards changed the permit is invalidated.
- need to put notice on the permit that conditions may change and additional requirements could be added between issuance and construction
- no grandfathering under CWA. The construction permit should be tied to the new VPDES standards and we know these a few months in advance.
- If the GP standards change prior to the completion of construction, then the construction may need to re-evaluated in light of the new standards.
- Suggest add: "if general permit expires before construction permit, the construction permit must be re-evaluated to ensure compliance with new general permit."

Section D: Should we eliminate reference to required length of contract?

- the expectation is that there is a contract in force while the system is operational, we are not setting specific timelines.
- how about eliminating the 24 month timeline requirement.
- consider adding a definition to a maintenance contract.
- no problem with getting rid of timeline so long as there is some notification mechanism when the contract terminates.
- HD needs to know when this thing terminates as this is a statutory requirement.
- HDs responsibility to ensure owner sends us inspection reports and maintenance contract. Owner needs to notify us when contract terminates.
- DEQ put in the GP that the minimum maintenance contract period is 24 non-consecutive months and that VDH must have a copy of the contract.

Because the 24 months is in the DEQ permit, VDH will not modify the length of the contract period.

Section E: Should the regulations allow transfer of permits to a new owner?

- Transferability – DEQ imposes a change of ownership form; if owners (old and new) do not sign than a new registration is required.
- What if bank forecloses on it?
- New owner would still have to be bound by terms of permit in order to be transferable.
- if you make it transferable, the attorney at a real estate closing will take over that permit.
- What about adding DEQ language about change of ownership?
- change of ownership will work like cert letters in onsite and will be a boon to real estate transfers.

Consensus appears to be "yes", reference language in general permit for transfer of permits.

Issue 3: Modifications to 12 VAC 5-640-230.

- Language related to fee waivers will be struck and reserve it for Fee Regulations
- Application completeness laundry list. Should we just say that the application needs to be complete and leave the details for later so as to achieve flexibility?
- sometimes applications simply cannot be entirely complete prior to site review
- VDH needs a complete application in order to fully evaluate and make a case decision.
- property transfer issue where you need an application in order to transfer property but do not have all the necessary information. Why not extend cert letters to these systems?
- 2 step process..first VDH notifies DEQ of no onsite option, then VDH does a site review, then VDH evaluates construction plans.

- Banks require more than just a General Permit, they usually require a construction permit or approved disposal site.
 - GP goes to health department, not owner. (This appears to be local HD/DEQ issue and does not extend statewide. GPs are issued to the owner by DEQ.)
 - in some Health Departments, the copy of the GP is forwarded to owner while sometimes DEQ sends it directly to owner.
 - thinks there is a need to keep these specifics in the regulation, particularly regarding easements.
 - when looking at a not recorded plat we may not be looking at the entire lot.
 - In the real world, you cannot have a complete application this early in the process. All the details have not been worked out when a construction permit is sought.
 - we need property lines staked out to determine setback distances and such.
 - you bear that out with the site evaluation, but that comes after the application form is submitted.
 - Combined form mimics registration statement of DEQ
 - additional information needs to be ascertained after application form is submitted.
 - Does RB think that site evaluation need to come before the application is submitted.
 - Fee is part of application, HD won't do site evaluation until fee is paid. When fee is paid, then they do site evaluation. Maybe if private sector were allowed to do a site evaluation then a complete application can be submitted.
 - nothing is stopping you from doing a site evaluation prior to submitting application. This would fall under the rubric of practicing of engineering.
 - the process can be streamlined and we do not need to cut VDH out.
 - If VSPE has a way that we can modify this, please give us our ideas.
 - agrees that sometimes the most difficult process is to get the plat recorded.
 - what about making site review as part of the application process?
 - Ray Coffee does not follow this procedure and provides great service.
 - should we require a recorded plat prior to issuance of construction permit?
 - sometimes the problem is that the house is moved and the discharge point has to change. The plat may be inaccurate.
 - what if they come in with construction plans? We think we need a recorded plat.
 - Recorded plat, from a planning perspective, is necessary before issuing a construction permit
 - not really looking for house location, just looking at property lines, easements and such.
 - anecdote of subdivision with no record on plat. Moved property lines, does VDH have notice of this?
 - in Loudon, each subdivision requires approval from HD.
 - some circumstances are unique, don't write regulation based on outliers.
- Discussion that application package needs to be complete to the point that VDH can review and make a case decision (i.e., issue or deny). Discussion that PE can do site evaluation, not restricted to being done by VDH EHS. Suggestion to change language in E to "...the department may conduct a site evaluation..."
- VSPE will develop language for simplifying the application/plan review process.
 - Suggest language that homeowner/designer may consult with VDH prior to submitting an application.
 - Point made that we should NOT write regulations based on unique situations.
 - Do we need recorded plats? YES (consensus)

- Prior to issuance of construction permit? YES (consensus)

Issue 5: Recordation of plats in Grantor Index. (note issue out of order because related to above discussion about recorded plats)

- Do we need recorded plats? Group says yes. But at what point? Group likes prior to issuance of the construction permit
- without recorded plat, how do you install it if boundaries have changed?
- We need lot lines in order to construct system because everything works from fixed point of reference.
- condition of OP recorded in grantor-grantee index. Put people on notice.
- Should run with the land. Not in owner's name, should be in land records.

Issue 4. Exceptions for failing systems

section 260, sections available for failing onsite systems. HD's would like to broaden exceptions and allow for more waivers. Some waivers include plans and specs, floodplains and dimensions of easement.

- does DEQ need notification if we do exceptions to setback distances between discharge points?
- DEQ does not believe that it needs to happen. IF VDH approves, then DEQ ok.
- Why no increased load or size? What if they want to expand and the system is failing?
- we would not stop from doing this. But this would be an expansion and not a repair. We would let them do this but not let them waive requirements like we normally would for a repair..we would not treat that as a repair.
- inconsistency between 246 and 478.
- Other than clarifying the language, no changes to this section are really needed. Many suggestion like floodplains and such are already encompassed and exemptions

Issue 6: Treatment unit approval process.

The treatment unit approval process in the regs is a good goal but the reality is we are not actually doing this. Want to line it up with AOSS regulations with generally approved and not generally - approved, with more rigorous testing for the not-generally approved, similar to the AOSS regs.

Committee was asked to review the information provided in the handout for discussion at the next meeting.