

**Virginia Department of Health (VDH)  
Sewage Handling and Disposal Advisory Committee (SHADAC)  
December 2, 2015**

**Meeting Location:**

Perimeter Center, Board Room 2  
9960 Mayland Drive  
Henrico, Virginia 23233

**List of Attendees:**

Advisory Committee Members

Colin Bishop	Jeff Walker	Joel Pinnix	Curtis Moore
Cody Vigil	Dwayne Roadcap	Mike Lynn	James Hall
Valerie Rourke	Karen Fried	Alan Brewer	Adam Ferris

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

VDH Staff and Members of the Public

Lance Gregory	Marcia Degen	Todd Grubbs	Laura Farley
Sean McGuigan			

**Administrative**

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

**Approve Agenda**

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

**Review Summary from September 16, 2016 Meeting**

SHADAC members did not receive the summary with sufficient time to review and comment. Members agreed to review the summary prior to the next meeting.

**Old Business**

**1. Final Regulations for Gravelless Material and Drip Dispersal**

Mr. Gregory provided a brief update on the status of the proposed regulations for gravelless material and drip dispersal. The two technical advisory committees (TAC) created to assist in develop of the regulations were reconvened in November. The TACs discussed public comments on the proposed regulations and provided comments on final regulatory language. The emergency regulations for gravelless material and drip dispersal are set to expire on March 14, 2016. Staff hopes to have final regulations adopted prior to expiration of the emergency regulations.

## **New Business**

### **1. Legislative Proposals**

Mr. Roadcap provided the SHADAC with an update on a number of legislative proposals the agency had hoped to put forward during the 2016 General Assembly session. He began with a proposal to create a plan to privatize onsite sewage and private well evaluations and designs. The proposal derived from Governor giving state agencies opportunity to present necessary revisions. The Office of Environmental Health Services (OEHS) does not typically present proposals. OEHS was asked to send out draft legislative proposals and seek feedback and comments for stakeholders for each of four legislative proposals. Stakeholders included SHADAC members and people that participated in previous privatization discussions. In all over 50 individuals and organizations received the proposals for feedback.

After receiving feedback, the next stage is for the Secretary of Health's Office and the Governor's Office to decide whether VDH should move forward with a proposal or make changes to the proposals. Ultimately it is the Governor's decisions, and then the agency has to find a patron for the bill.

Mr. Roadcap stated the OEHS received the most negative feedback on the proposal to create a plan. Over the years the agency has had three different processes to look at our business model. In 2005, the Governor asked the agency to have a consultant (E.L. Hamm) to review health department processes. E.L. Hamm said VDH should remove itself from design services to the extent possible and focus on the 10 essential public health services.

In 2011, a bill was introduced to remove VDH from direct services. The result of that bill was a request for VDH to engage stakeholders. The outcome of that engagement was a determination that there is not a one size fits all process for privatization in Virginia

The next phase was 2013 when VDH hired the Institute for Environmental Negotiations (IEN) to engage in a stakeholder process, Safety and Health in Facilitating a Transition (SHIFT), in an effort to move VDH away from direct service delivery. That process resulted in a recommendation that VDH encourage, but not require, owners to use the private sector.

Mr. Roadcap commented that agency leadership believes the proper approach is for VDH to look more like building officials. Staff would review the work of private sector professionals, but not perform the evaluation and design work.

VDH could not find agreement among stakeholder groups in previous efforts, so the proposal is for VDH to create a plan using previous reports, and then present that plan to the General Assembly and the Governor. It would be just a plan. The plan would identify statutory, regulatory, and policy changes necessary to privatize. That plan would go back to the General Assembly and they would determine whether to implement the plan.

Mr. Roadcap stated that if the proposal were to move forward, OEHS would present the plan to the SHADAC and ask for feedback before moving forward.

Mr. Roadcap stated that so far only one group supported the legislative proposal; the Virginia Onsite Wastewater Recycling Association (VOWRA). Everyone else either opposed it, strongly opposed it, or recommended changes.

Chairman Lynn asked whether VDH received a response from everyone.

Mr. Roadcap stated that OEHS had not received a response from everyone. He the provided a recap of the responses.

- Groups that had no position: the Department of Professional and Occupational Regulation (DPOR), the Virginia Municipal League (VML), and the Department of Environmental Quality (DEQ).
- The Virginia Association of Counties (VACo) provided a written reply of strong opposition, noting that the legislative proposal did not have a specific process for receiving stakeholder feedback. VACo also noted that prior work did not reach consensus, but SHIFT did agree to encourage use of private sector but that VDH should remain a service provider. VACo also raised concern of not having sufficient private sector provides in certain areas of the state.
- The Virginia Association of Realtor (VAR) opposed the proposal because of worries that a transition would increase cost, and changes in fees might be disruptive.
- The Home Builders Association of Virginia (HBAV) did not support the proposal but would not oppose it provide VDH assure there is adequate competition, and VDH performs inspections of all installations. HBAV noted they would object to any increase in application fees.
- The Virginia Water Well Association (VWWA) also opposed the proposal stating that current processes work well, and change would increase cost if VDH stop performing services. VWWA also noted concerns about low income being able to afford private sector services.

- The Virginia Environmental Health Association (VEHA) requested changes from the legislative proposal. VEHA's concerns dealt with assuring that VDH remained adequately funded, requiring a mechanism to ensure timely work product, a need for a consensus building approach, and make sure that VDH staff retain competency in soil evaluation going forward.
- The Virginia Association of Professional Soil Scientist (VAPSS) suggested some changes, including a reliable inspection process, language stating that regulatory oversight does not require licensed staff, and that evaluation requires third party reviews to avoid conflicts of interest.
- The Virginia Association of Alternative Onsite Soil Evaluators (VAAOSE) requested changes to require the Federal Trade Commission to participate, and the inclusion of references to United States and Virginia Constitutions.
- The American Council of Engineering Companies (ACEC) had no position, but thought the plan needed to assure that low income individuals had access to services.

Mr. Roadcap stated that OEHS also reached out to Environmental Health Managers in 35 health districts for feedback. Internal feedback included concerns about: increasing cost for repairing failing system, interruption in VDH career plans, inadequate work product from the private sector because they are profit driven, concern about losing county funding and the impact on districts ability perform required duties, processing times for funding assistance proposal, and general concern with VDH staff keeping their expertise.

Mr. Roadcap stated that OEHS also received comments from individuals not associated with a group; most either stated the proposal needed changes or opposed it.

Chairman Lynn asked whether, from the department's perspective regarding budget, OEHS saw the agency budget being the same. He also asked whether there would be a shift in the amount of training necessary to keep competency if VDH staff are not doing designs.

Mr. Roadcap noted those that as a valid concern, and stated VDH would need to addresses that concern in the plan.

Mr. Brewer added that in the way the proposal was presented, it described a shift in services, but he read the legislation as including private well designs and safe, adequate, and proper evaluations.

Ms. Fried voiced concern about the appeal process if a property owner felt the private sector made an adverse decision.

Mr. Roadcap commented that issue was not just a concern from VAR. He added that when VDH designs something, because they are regulators, they must adhere to the minimum requirements of the regulations. The concern begin voiced to OEHS is that the private sector would be more

conservative (i.e. more alternative systems, more cost) and there would not be a way to challenge the private designers decision.

Ms. Fried stated that in the county she lives in, you have to be 100 feet from every well, but you can get a variance. She asked whether the private sector would still be able to request that type of variance

Mrs. Rourke commented that she never had a chance to see the proposal. She asked if staff were aware of any other potential legislation on the issue.

Mr. Roadcap commented that he was not personally aware of any other proposals.

Mrs. Rourke commented that sometimes a legislature will take it on their self to put forward a proposal. She asked whether OEHS had considered training for the private sector to assure consistency, as well as training for staff. She also noted that the repair fund in the proposal talks about onsite sewage systems but the proposed plan also talks about private wells. She asked whether the fund would also help with private wells.

Mr. Hall commented that VDH needs to make sure low income individuals are looked after.

Chairman Lynn stated that from HBAV wanted to emphasis the need to attempt, through policy or training, to make sure VDH and the private sector see a site the same way, and that the private sector not be driven by profit to design alternative onsite sewage systems (AOSS).

Mr. Vigil commented that some manufacturers were okay with the proposal, others were opposed.

Mr. Moore stated that VOWRA supports the proposal. He commented that it seemed odd to oppose just creating a plan before you know what is in it, adding that there will be plenty of time to comment on the plan that is put forward. Mr. Moore stated that he thinks there is a lot of benefit of keeping practitioners within their boundaries. The agency sees the fact that their world is complicated enough without the conflicts of being both a regulator and designer.

Mr. Pinnix had no comment.

Mr. Walker stated the he supported Mr. Moore's comments. He stated the he believes there is a reliance on government services. VDH is having a tough time hanging on to qualified professionals, and the cost to train that person is excessive. Soil interpretation is an art. Mr. Walker stated that he doesn't know how to develop a proposal if people oppose even creating a proposal. He added that there are delegates looking at presenting legislation. He stated that VAPSS has found consensus that concerns over ethical breach is an area where VDH can step in. VDH can ask the private sector why they presented a certain plan. Mr. Walker also asked that DPOR have a consistent code and that stands of practice and competency be recognized. He also

commented on the private sector provide training for people coming into the industry. VAPPSS wants to see stakeholder cooperate for the benefit of the public.

Mr. Bishop stated that he thinks OEHS needs to look at the big picture, at the purpose of the health department. He noted that nationally, it is a little unusual for the health department to do design. If VDH wanted to build septic tanks because they could do it cheaper, no one would say that is appropriate. Mr. Bishop believes soil evaluation is the exact same thing. He also noted that it is highly unusual that all systems are not being inspected by VDH. Mr. Bishop believes most people would say that is an appropriate role. He added that concerns of cost can be addressed. He asked whether VDH is performing their core mission adequately under the current model. If the answer is no, then he believes VDH need to go down the proposed path.

Next, Mr. Roadcap discussed another proposal dealing with difficult issues with safe, adequate, and proper (SAP) evaluations. He stated the problem is that if a house burns down and the system was installed under older regulations, the Code requires the building official to seek approval from VDH stating the system is SAP. However, VDH can only apply today's regulations and laws. When we look at whether a system is SAP, we are applying current rules to something installed under a different set of regulations. Mr. Roadcap commented that the proposal allows VDH to approve a system that is non-conforming, provided it is not failing and VDH believes the system is going to work. The second component of the proposal is for VDH to accept and rely on input from licensed professional (installers, onsite soil evaluator, professional engineers, and operators) on whether the system is SAP to sign off on the permit with the building official. Under the proposal, only new construction would have to meet current regulations.

Mr. Roadcap then provided a summary of responses.

- VACo and VAR did not take a position.
- HBAV offered amendments. They said the law applies to new construction as well and wanted OEHS to clarify that the proposal is talking about additions, not new construction. HBAV also voiced concern with language stating that the system will not impact ground water; language is too broad and localities might use the language to restrict building.
- VWWA supported the proposal.
- VEHA stated the language was too broad and VDH would need a policy to implement the proposal.
- VAPSS offered amendment to change discretionary use of private sector from "may" to "shall".
- VAAOSE provided the same amendment as VAPSS.
- Several individuals did not support the proposal.
- VML had no position.

- DPOR provided several suggestions regarding who should be the appropriate licensed individuals that perform the inspections.
- Environmental Health Managers supported the proposal.
- Several individuals supported the proposal.

Mr. Brewer stated that everyone knows this has been an issue for decades. He suggested that VDH look at the terminology and use terms that are defined in the Code to avoid additional confusion.

Mrs. Fried asked what legally installed meant.

Mrs. Rourke stated it was not clear whether the language applies to both new construction and expansions. She also noted that some system never received approval from the Commissioner.

Chairman Lynn stated the proposal talked an issue he deals with every day. He stated that his company defaults back to a draft policy form several years ago for SAPs. He added that it is really easy to write a report saying a system is working, and it is easy to write a report on a system that is failing. It is hard when the system falls in the gray area. Even if the systems are permitted the “safe” aspect is difficult to predict. Chairman Lynn stated that he hopes regardless of the legislative proposal, that there will be a policy on SAPs.

Mr. Vigil commented that some treatment systems are pretty detailed, so you would need a properly trained individual to evaluate them.

Mr. Moore stated that he has similar comments to Mr. Brewer, but support the effort. He added that he believes the proposal is very close to what is necessary to deal with the issue.

Mr. Pinnix stated the he thought the proposal was unnecessary because SAPs are discretionary, and nothing in this proposal moved away from someone having to make a call. He stated that he thinks the issue lends itself more to a policy. Mr. Pinnix asked what problem OEHS is trying to solve.

Mr. Walker commented that currently in Southwest Virginia, local health departments rely on the private sector to say a system is SAP. Mr. Walker commented that he opposes the suggestion of a contractor being able to do the inspection. He added that VDH does not have a written policy, and the process varies from district to district. He believes there should be one set standard for real estate transaction and/or a SAP for building permits, and it should be as little opinion and as much evidence as possible.

Mr. Bishop commented that once you codify something you don't have much flexibility, whereas with policy you have more flexibility.

Mr. Roadcap then discussed the third proposed piece of legislation dealing with licensure terminology. He commented that VDH didn't receive any opposition to the proposal, but several

organizations wanted to see additional changes. The proposal is a house keeping measure to make language in one section of the Code meet another section of the Code. The proposal changes the term authorized onsite soil evaluator to licensed onsite soil evaluator.

VAPSS suggested an amendment that the Authorized Onsite Soil Evaluator Regulation be included in DPOR regulations.

Other organizations supported or took no position.

Mr. Pinnix commented that other items fall under housekeeping; defining a septic tank permit and onsite sewage system.

Lastly, Mr. Roadcap discussed a proposal to modify the permit validity date for private wells. Currently the code specifies that the permit validity for an onsite sewage system is 18 months, with a possible 18 month extension. The Code does not have a defined expiration date for well permits. At one time onsite sewage systems and well permits were 54 months. The Code was changed for onsite sewage systems, but not for wells. The proposal is to merge the permit validity dates for well permits with onsite sewage systems to say all permits are valid for 18 months, with an 18 month extension. Some comments were to just change the regulations, or change OSS to 54 months. Mr. Roadcap then provided a recap of responses.

- VWWA and VEHA support.
- VAR opposed because they believed water rights are a property right.
- HBAV had no objection, as long as there is an option for renewal.
- VOWRA proposed an amendment to add an express well permit term in Code.
- VAPSS, VAAOSE, ACED, VACo, and DPOR took no position.
- A lot of individual responses that were supportive.
- One individual response that opposed it.

Mr. Feris asked if there were any thought of transferability of private wells permits in the Code.

Mr. Moore suggested looking at the sentence before the amendment; may want to say “issue or deny” not just “issue”.

Mr. Pinnix stated that he was personally in opposition. He commented that VDH created the administrative issues by having combined applications. He suggested that VDH have separate onsite sewage system and private well permits. He also voiced concern that the proposal could be a burden on anyone that allows the application to expire.

Mr. Walker commented that the more public information the better. He stated that it is very difficult to determine whether there is a well permit on a site, because there is no graphical interface. He also shared Mr. Pinnix’s concerns. He added that sometimes he will separate the

well permit application to make sure the permit is valid for 54 months. It is also a paperwork reduction measure not to have to review applications every 18 months.

Mr. Roadcap stated that he appreciated the feedback and that he would share the comments with others. He added that there will be follow up discussion on whether to move forward with any of these proposals.

## **2. Regulatory Review**

### **Regulatory Review:**

Chairman Lynn stated that he gave a presentation to VEHA looking at the aspects recommended versus mandatory pump outs in the Chesapeake Bay watershed and evaluation of operation and maintenance reports/samples that come back on AOSS.

Mr. Moore asked whether, programmatically, VDH want to go down the road of addressing conventional systems in the Chesapeake Bay Watershed.

Mr. Walker commented Maryland is a good model.

Mr. Lynn asked how Virginia ended up with nitrogen reduction only being required for AOSS.

Mr. Roadcap commented that there was a specific legislative change that gave VDH authority to address nitrogen in the Chesapeake Bay from AOSS, but the Code did not extend that authority to conventional systems.

Mr. Pinnix stated that he disagrees and believes the Code gives VDH the authority to regulate all systems, including a nitrogen standard in the Chesapeake Bay watershed. Mr. Pinnix added that there are three mechanisms for VDH to permit non-complying systems (repair, voluntary upgrade, waivers). He believes that all three can result in septic tank effluent directly dispersed into groundwater. He commented that the General Assembly needs to understand that some of these legal mechanisms are not the best for public health and the environment.

Mr. Brewer commented that it would help to clarify the intent of the discussion; are we talking about nitrogen reduction to meet the Chesapeake Bay total maximum daily load, or nitrogen reductions to protect public health. He commented that other issue is that there are three best management practices the state gets credit for: connect to sewer, install denitrification, and sewage pump out. Virginia could be missing out on a big nitrogen reduction credit because we estimate the number of pump outs that occur outside of the Bay act area.

Mr. Pinnix commented that the U.S. EPA model indicates that Virginia produces 2.9 million pounds of nitrogen from onsite system. He calculated that setting a standard for 1,000 AOSS installation per year would reduce Virginia's nitrogen load by 0.02 percent a year. He stated the public health issue is a much bigger issue.

Mrs. Rourke asked what percent reduction would be achieved if conventional systems were added to the nitrogen reduction requirements.

Mr. Moore commented that the SHADAC's charge is to make a recommendation to the Commissioner. He believes there are a number of areas the SHADAC would like to see the Sewage Handling and Disposal Regulations and the Regulations for Alternative Onsite Sewage Systems being combined.

Chairman Lynn asked whether the topic is something that the whole committee wants to work on.

Mr. Brewer made a motion that a subcommittee be developed to assess and propose to the full committee options for regulatory reform.

Mr. Pinnix seconded the motion.

Mr. Roadcap stated that he supported the motion; the regulations are 15 years old.

All were in favor of the motion.

Mr. Brewer volunteered to chair the subcommittee. Mr. Walker, Mr. Bishop, Mrs. Rourke, and Mr. Moore volunteered to participate.

### **3. Discussion of Internal VDH Policies/Processes**

Mr. Pinnix suggested linking this discussion with the GMP FAQ subcommittee.

Mr. Moore commented that he believed Mr. Brewer's subcommittee is also going to have to dive into the policies and processes, and what they should be moving forward.

Mr. Moore commented that the Rappahannock Health Department began using a loading rate chart that was provided as guidance, but has become a defacto regulatory requirement.

Chairman Lynn commented that he has always been vocal about local requirements, because he works in four different localities that have very different requirements. There are local differences that require a local program to serve the local community differently than the adjacent locality. What is frustrating is when localities make changes to substantive requirements of the regulations without the vetting process that happens at the state level.

Mr. Bishop stated that he didn't think the SHADAC could present one motion to address this topic. He then made a motion that any issues related to internal VDH policies/processes be brought forward as an agenda item at the following SHADAC, as a standing agenda item.

Mr. Moore seconded the motion.

Mr. Walker commented that in the past the SHADAC has talked about creating an inventory of local policies.

All were in favor of the motion.

**SHADAC role regarding equipment approvals.**

Chairman Lynn stated that historically the SHADAC reviewed product approvals, but over the last few years that has typically gone through VDH staff, and they developed a TAC when they felt it was necessary. He asked whether products should come before the SHADAC.

Mr. Pinnix commented that there was not a defined process in the past. He added that he was not sure that all members of the committee are qualified to speak to these systems, and that the SHADAC shouldn't be involved in individual product approvals.

Mr. Bishop stated that he agreed with Mr. Pinnix, but the SHADAC may want to look at the process for how things are approved.

Mr. Hall commented that past reviews were contentious.

**Adjourn**

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

Date: December 2, 2015  
Time: 10 am to 2 pm  
Location: Perimeter Center, Board Room 2  
9960 Mayland Drive  
Henrico, Virginia 23233

**Administrative (15 minutes)**

1. Welcome. (5 minutes)
2. Approve agenda. (5 minutes)
3. Review summary from September 16, 2015 meeting. (5 minutes)

**Public Comment Period**

**Old Business (15 minutes)**

1. Final regulations for gravelless material and drip dispersal (15 minutes)

**Break (10 minutes)**

**New Business (90 minutes)**

1. Legislative Proposals (90 minutes)

**Break (10 minutes)**

**Continue New Business (60 minutes)**

2. Regulatory Review (30 minutes)
3. Discussion of Internal VDH Policies/Processes (30 minutes)

**Adjourn**