

Agenda – Meeting #1 July 18, 2013

The Covenant School Upper School, 175 Hickory Street, Charlottesville, VA 22902

- 10 a.m. Welcome/Introductions**
- Welcome and introduction to SHIFT charge
Allen Knapp, Director, Office of Environmental Services, VDH
 - Introductions (name, organization(s) representing, hope for this process)
Frank Dukes, Director, UVa IEN
Tanya Denckla Cobb, Associate Director, UVa IEN
Kelly Wilder, Senior Associate, UVa IEN
 - Overview of the process
- 10:45 a.m. Committee Protocols**
- Roles (IEN, VDH, committee members, technical advisors, observers)
 - Responsibilities of committee members
 - Establishing guidelines for discussion
 - Explanation of consensus
- 11:15 a.m. Onsite Septic 101 – Part A**
- History and overview of the issue
Dwayne Roadcap, Acting Division Director, Onsite Sewage and Water Services
 - Questions and discussion
- 12:15 p.m. Lunch (box lunch provided for committee members)**
- 12:45 p.m. Findings of Key Stakeholder Concerns**
- Report on interviews, stakeholder concerns, key issues
 - Questions and discussion
- 1:30 p.m. Key Issues for SHIFT Discussion**
- Have we captured all issues? Do we need to combine/separate out issues?
 - Identify priority order for issues to be addressed – easy wins, etc.
- 2:30 p.m. Moving Forward on Issues & Decision Criteria**
- 3:15 p.m. Next Steps**
- Proposed agenda and location for next meeting
 - Information needs
 - Other
- 3:30 p.m. Adjourn**

Process Overview

Thank you for being a part of the Stakeholder Advisory Committee charged with advising the VDH on how to maximize private sector participation in the onsite sewage program. This document provides an overview of the committee’s work at each meeting.

<u>Phase 1</u>		
Learn and share about concerns & issues Identify & agree on core responsibilities for VDH & core functions for private sector		
Meeting 1 July 18th	Meeting 2 August 8th	Meeting 3 August 29th
<ul style="list-style-type: none"> • Introductions • Roles & responsibilities • Committee charge • Introduction to consensus process • Stakeholder concerns • Develop issue list • Timeline & next steps 	<ul style="list-style-type: none"> • Develop evaluation criteria • Develop deeper understanding of other committee member interests • Move from understanding to brainstorming & identifying common ground 	<ul style="list-style-type: none"> • Continue to work on developing common ground and the range of possible recommendations • Move from brainstorming to consensus process

<u>Phase 2</u>	
Explore options & develop recommendations for fiscal issues and regional differences, transition plan, and other issues	
Meeting 4 September 26th	Meeting 5 October 10th
<ul style="list-style-type: none"> • Strive to build consensus on recommendations • Develop draft recommendations 	<ul style="list-style-type: none"> • Refine draft recommendations • Categorize recommendations – easy/quick implementation, additional study, regulatory action, legislative changes

<u>Phase 3</u>		
Refine and agree on recommendations		
Meeting 6 October 31st	Meeting 7 November 21st	Meeting 8 December 5th
<ul style="list-style-type: none"> • Review draft report • Provide feedback on draft report and refine recommendations as needed 	<ul style="list-style-type: none"> • Review final report 	<ul style="list-style-type: none"> • Optional wrap-up

About Facilitation and Consensus

These meetings will be facilitated by a team of professionals from the Institute for Environmental Negotiation (IEN) at the University of Virginia. During your first meeting, the facilitators will further explain the concept and process of consensus, which includes the following:

- Everyone can live with the final agreements without compromising issues of fundamental importance.
- Individual portions of the agreement may be less than ideal of some members, but the overall package is worthy of support.
- Participants will work to support the full agreement and not just the parts they like best.

Benefits of working by consensus are:

- Individual participants who might be skeptical of working with opponents or those they don't know are reassured by having effective veto power over any decisions.
- Group members seek to satisfy the needs of all participants.
- Everyone's views are given real consideration.
- As a practical matter, decisions with broad-based support are more likely to be implemented.

Testing for Consensus:

- 3** – Fully support; able to live with decisions; will not actively work against them outside the process
- 2** – May have some questions/concerns but still able to live with the decisions reached; will not actively work against them outside the process
- 1** – Too many questions/concerns; not able to live with or support the full proposal/package; the group needs more discussion

Committee Roles and Responsibilities

SHIFT Roles:

1. A **full member** is a participant who was invited to be at the table and whose consensus is sought and tested.
2. A **resource member (state agencies, others who may attend as needed)** is someone who participates regularly to provide expertise. Resource members do participate in consensus decisions.
3. The **convener (VDH)** is responsible for bringing together the participants and has responsibility for implementing any decision. VDH also has interests at stake, and will have a seat at the table as well as resource members available to provide expertise.
4. An **alternate member** is someone officially designated by a full member to participate in decisions when the full member is absent. The alternate member may attend meetings regularly as well, but will not participate in decisions when the full member is present.
5. The **facilitators (IEN)** advocate for a fair and effective process but take no stand on any substantive decisions. The facilitators will also record member concerns and questions and group decisions and will prepare meeting summaries and the final consensus report.
6. An **observer** is anyone from a constituency that either has decided not to participate or that was not invited, but wants to monitor the process.

SHIFT Member Responsibilities:

1. Represent the full range of interests of your constituency, not your own personal interests;
2. Seek solutions for mutual gain that will meet the interests of your constituency as well as other interests, while also meeting the common public good;
3. Come to the table willing to learn as well as to share your concerns and ideas;
4. Identify needs and interests to address the group's purpose;
5. Ask for and review relevant information;
6. Develop criteria for preferred solutions;
7. Offer ideas that meet those criteria;
8. Participate as needed in potential subcommittees, with meeting schedules to be determined by each subcommittee.

Guidance for SHIFT Members:

1. Ensure adequate time to prepare for and participate in meetings;
2. Report progress of discussions to the organizations you represent;
3. Report the concerns and ideas of your organization to the SHIFT advisory committee;
4. Be prepared for difficulties with cycles of ups and downs and even apparent impasse – consensus-building work can be hard!
5. Be candid and assertive in sharing your interests and concerns, but make sure that you invite others do the same;
6. Ensure that others are listening to, and understand, your views;
7. Ensure that you listen, and fully understand, the views of others;
8. A sense of humor helps you and others work through difficulties;
9. Prepare between meetings – don't just show up.

**Virginia Department of Health Onsite Septic Program
Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee**

SHIFT Committee Members

Sector	Name	Organization/Affiliation
Builders/realtors	Mike Toalson	CEO, Home Builders Association of Virginia
	Tyler Craddock	VA Manufactured and Modular Housing Association
	Neil Williamson	Governmental Affairs Director, Charlottesville Area Association of Realtors
Environmental interest groups	Dan Holmes	Piedmont Environmental Council
	Ed Dunn	Virginia Environmental Health Association
Homeowners/citizens	Larry Wallace	Virginia State Program Manager, SERCAP
	Bill Timmons	VDH Sewage Handling & Disposal Appeals Review Board
Local government officials (planners, building officials, administrators)	Beau Blevins	Virginia Association of Counties
	Jeff Gore	Legislative Liaison, Loudoun County
Manufacturers	Dave Lentz	Regulatory Director, Infiltrator Systems Inc.
Onsite sewage system professionals (OSEs, PEs, Installers, Operators)	Jim Slusser	AOSE President, VA Association of AOSEs
	Tony Bible	AOSE
	Curtis Moore	AOSE VOWRA Representative
	Tim Reynolds	Reynolds-Clark Development
	Sandra Gentry	Manager, Gentry Septic Tank Service Secretary, VOWRA VDH Sewage Handling and Disposal Appeals Review Board
	Joel Pinnix	President, Obsidian Inc.
	Jeff Walker	President Elect, VAPSS
	Bill Sledjeski	CPSS/AOSE
	Vincent Day	Sewage Handling and Disposal Advisory Committee Chairman, Virginia Assn. of American Geologists
VDH staff (field staff, EH managers, health directors, OEHS, deputy commissioners)	Jim Bowles	Environmental Health Coordinator, VDH Office of Environmental Health Services
	Charles Devine, M.D.	Health Director, Lord Fairfax Health District
	Scott Honaker	Environmental Health Manager, Mt. Rogers Health District
Well Drillers	Eric Rorrer	President, Rorrer Well Drilling Inc.
Resource Members	Dwayne Roadcap	Acting Division Director, Onsite Sewage and Water Services Division, VDH
	Alan Knapp	Director, Office of Environmental Health Services, VDH
	Mark Courtney	Deputy Director for Licensing and Regulation, DPOR
	Larry Getzler	Chief Economic Analyst, DPB

* Self-reported – Please let us know if you need to update your position or affiliation.

SHIFT Charge from Virginia Department of Health

Issue Statement:

Privatization of the onsite sewage program began when the 1999 General Assembly mandated sweeping changes. VDH was required to accept private evaluations and designs from Authorized Onsite Soil Evaluators. Up until then, VDH had performed all direct services, except for engineering designs and occasional advisory reports from the private sector. The General Assembly decided over a decade ago that direct services could be performed by the private sector and that VDH oversight of the program and private sector was necessary.

Today, about 35 percent of all applications submitted to VDH for onsite sewage and well permits include private sector soil evaluations and designs. The percent of private sector work varies widely across the Commonwealth.

The SHIFT Charge:

Produce a report of recommendations to advise VDH on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment.

Categories of Discussion Topics		
Roles & Responsibilities	Transition Process, Including Regulatory and Legislative Changes	Financial and Economic Issues

To the extent possible, the SHIFT’s recommendations should address the following questions and issues:

1. Roles and Responsibilities

- a. What direct services and core functions are necessary to protect public health and ground water supplies in the Commonwealth? Which of those services and **core functions must be accomplished by the Department?**
 - i. Identify the Department’s core functions and responsibilities in assessment, policy development, and assurance (see the 10 essential services for environmental public health);
 - ii. Identify how the Department can assure quality and timely direct services are provided to the public and local governments, especially given regional differences;
 - iii. Identify the Department’s resource needs to perform the core functions that are necessary to protect public health and groundwater supplies;
 - iv. Identify ways to keep a “checks and balances” system in place.
 - v. Identify how the Department’s staff can maintain expertise in the program.
 - vi. Identify the elements or conditions that create choice and competition for services;
 - vii. Evaluate options for responding to repair applications;
- b. What **core functions or tasks can be accomplished by the private sector?** Identify the strategies and methods for achieving greater private sector involvement. The report should identify the following to the extent possible

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- i. Investigate ways to encourage or increase private sector input in rural areas;
 - ii. Investigate ways to encourage or increase private sector input for work with repairs
- 2. Transition Process, Including Regulatory and Legislative Needs**
 - a. Identify or recommend the means for an **orderly transition**.
 - i. Identify or recommend tactics that may be implemented relatively easily and quickly;
 - ii. Evaluate regional differences, barriers, and triggers that could effect change;
 - iii. Identify or recommend options that appear promising or feasible but require additional study or input;
 - iv. Identify or recommend ideas that require regulatory action by the Board of Health;
 - v. Identify or recommend legislative changes.
 - b. How should change be accomplished to **minimize unintended consequences and negative impacts**?
 - iii. Identify challenges for change and mitigation strategies;
 - iv. Recommend or create a reasonable timeline
 - c. Describe other strategies, data, information, or detail as developed through or deemed necessary by the SHIFT stakeholder process.
- 3. Financial and Economic Issues**
 - a. Identify **fiscal impacts** to the **Department and local governments** related to recommended changes.
 - b. Identify the **economic impact** to those who **receive direct services** (i.e., private citizens, local governments, septic contractors, and other stakeholders).
 - i. Describe anticipated or possible financial impacts to low and moderate income property owners with additional privatization of direct services;
 - ii. Describe strategies to reduce any possible impact to low or moderate income owners;
 - iii. Address supply and demand to ensure reasonably priced services can be provided as housing market conditions change or improve;
 - iv. Describe how changes in the housing market could affect the demand for services and the ability to provide timely services.
 - v. Discuss ideas to reduce financial impacts from bad outcomes, such as the early failure of an onsite sewage system.
 - c. Identify **funding needed** to implement SHIFT stakeholder group recommendations.
 - i. Identify ways to improve or change the Department's fee structure to help increase privatization of direct services.
 - ii. Identify short and long-term funding needs to sustain the Department's implementation of core functions.
 - iii. Options to investigate for the above:
 1. Investigate the ability to institute regional policies or regional fee differences for various application types, including new construction, reviews of existing sewage systems, voluntary upgrades, certification letters, repairs, etc.
 2. Investigate the possibility of creating a fund or expanding the betterment loan program;
 3. Investigate the possibility of supporting the Department with greater general fund revenue;
- 4. Other**
 - a. Analysis should include the E.L. Hamm study from 2006 and the HB2185 study. Are these studies still reflective of stakeholder opinions and views?

Preliminary Scan of Stakeholder Concerns and Issues

VDH Roles – Design/Evaluation vs. Oversight/Enforcement

Some interviewees expressed concern about a perceived conflict of interest in VDH's dual role as practitioner and regulator. Many people commented that VDH's role should be to protect public health, which to the interviewees meant providing administration, enforcement and extensive oversight. There were concerns that VDH's design and evaluation work was in fact taking resources away from their ability to create, interpret and enforce regulations – leaving a gap where neither the private nor public sector is accountable “post first flush.”

Concerns were also expressed related to how VDH will ensure oversight in the future if their involvement in evaluation and design is minimized. It was noted that oversight must be sufficient to overcome any danger that the private sector would focus on profits to the detriment of public health.

VDH Staff, Capacity and Budget

There is a perception that some systems designed by VDH are subpar to the private industry standard – this may be due to high turnover when staff who begin their careers at VDH leave for the private sector.

Contemplating a shift in work to the private sector brought up questions about VDH's ability to fulfill its public responsibilities while grappling with changes to its business operations. Interviewees wondered whether any VDH staff would have to be cut or whether revenue from fees would fall. Additional questions about VDH staff came up:

- Do they have the appropriate training and expertise for an expanded oversight role or will they need additional training?
- Will staff be reduced?
- Do they have the capacity to act on oversight findings?
- Will work be reallocated (for example, will additional time be devoted to improving application review times, which currently cause project delays in some parts of the state)?

Particular concern was expressed about how VDH staff might best transfer their accumulated knowledge about certain areas of the state where they have historically done the most work, if in the future the private sector takes over work in these areas.

It was also noted that some VDH staff view onsite design as their “turf,” presenting the question of how to minimize ill will during the transition.

Licensing and Standards

A number of interviewees noted that system designers are sometimes not being required to prove their licensure or in some cases are not licensed at all. There is a perception that there are different standards for VDH and the private sector in this regard.

“Bare” applications were another area of concern. It was noted that VDH is accepting bare applications rather than requiring a time consuming consultation on the application request prior to its submittal. Once certification letters are issued to a developer, using private soil data, the builder can later submit a bare application and VDH will do the design. Two issues were noted: (a) VDH taking on design based on private sector soil data makes liability unclear for the homeowner and (b) regulations specify that if soil data has been submitted by a soil evaluator, VDH cannot do the design.

Certain “bad actors” are not being held accountable to clients for fulfilling design requirements of the site and project, and there needs to be a way to report them that does not subject the reporter to backlash and blacklisting. The need to move forward with legislation on Governor’s desk that will create serious civil penalties for onsite septic systems that fail to operate properly was also noted.

Market/Competition

There is a perception that the subsidization of VDH work has led to a monopoly and that it affords a competitive advantage by allowing VDH to select the criteria for delivering an incomplete product. Concern was expressed that VDH’s monopoly position in Southwest Virginia allows them to skirt regulations – specifically accepting designs from unlicensed employees. Their evaluation and design work puts them in direct competition with the private sector, which some felt was problematic. It was noted that there needs to be enough private providers to service areas previously served by VDH and compete with each other, and the lack of work and lower profits for the private sector in rural areas could be a constraint.

Geographic Considerations

The contemplation of a shift brought up a number of concerns specific to rural areas of the Commonwealth: There is a lack of private professionals in areas primarily served by VDH, particularly Southwest Virginia – how is adequate service to these areas ensured? Economically-depressed areas could be further stressed by the cost of private sector work. And some areas are happy with the status quo (reflected in local legislation) – there could be a political backlash against the extra cost of private work.

Inconsistent Interpretation and Enforcement of Regulations

It was noted that there is inconsistency in interpretation and enforcement of policies and regulations in different parts of the state, which can make it hard for the private sector to comply and to work in different regions. The variability was attributed to the ability by district health managers to interpret differently from one another and to the fact that local ordinances can be stricter than state rules.

Interviewees emphasized the importance of ensuring consistency in the future and wondered how this could be done.

(Alternative systems were also mentioned. Some local ordinances try to limit their use. There is also the need to find a happy medium in regulating them – too many regulations would stymie those who have more experience using them, but there needs to support for those new to them.)

Repairs after the Shift

The question was raised as to what happens to systems that were evaluated and designed by VHD in the past – does the private sector assume responsibility or does VDH maintain them? This is of particular concern because system repairs are already expensive and could be more so if the private sector was accountable for repairs.

VDH Capacity to Follow through with Recommendations

Overarching questions were raised about whether this process will be fruitful based on perceptions of past inaction on these issues. There was concern that VDH will not set clear transition deadlines. Earlier changes to onsite septic (AOSE program) were made with clear transition deadlines, and it will be helpful to do the same here.

About the Document

This document is based on 18 surveys conducted in late June and early July 2013 with members of the Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee. The goal was to gain a baseline understanding of the issues the committee might like to address in its work to advise the Virginia Department of Health on privatizing elements of the onsite septic program.

Questions asked:

1. What are the biggest concerns you hear from your sector/organization/constituency about the VDH onsite septic program?
2. What are your ideas for how the program could be improved in the future?