
**Stakeholder Advisory Committee
on
Safety and Health in Facilitating a Transition (SHIFT)**

**Final Report
for the
Virginia Department of Health**

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Stakeholder Advisory Committee on Safety and Health in Facilitating a Transition (SHIFT)

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EXECUTIVE SUMMARY

Between July and November of 2013, the Virginia Department of Health convened a stakeholder group of 25 individuals representing nine interest groups to make recommendations for the future of its onsite septic program. The Safety and Health in Facilitating a Transition (SHIFT) process was planned through a collaborative effort involving the Virginia Department of Health (VDH); the University of Virginia's Institute for Environmental Negotiation (IEN), which served as the independent facilitator; and a six-person planning team representing diverse stakeholder interests.

The SHIFT process was precipitated by a number of changes made over the past decade in how the VDH administers the state's onsite septic program. The program is considered vital to the general public and environmental health of the Commonwealth of Virginia. Use of the private sector for evaluating soils developed by the early 1980s for many counties throughout the commonwealth. Private sector designs of onsite septic systems began when the 1999 General Assembly mandated sweeping changes, requiring the VDH to accept private evaluations and designs from Authorized Onsite Soil Evaluators (AOSEs) and professional engineers (PEs). The agency has continued to provide ongoing regulatory oversight for the program. After the VDH AOSE certification program expired in 2009, its certification program was replaced by the Department of Professional Occupation and Regulation (DPOR) licensure.

Even with the changes initiated in 1999 that led to increased use of the private sector for onsite evaluation services, and numerous legislative changes over the years, the VDH continued to experience backlogs and stresses on the program as demand for site and soil evaluation increased during the building boom of the 2000s. VDH commissioned a study in 2006 by E.L. Hamm & Associates that examined ways to improve the VDH business model and processes. A tabled bill in the 2011 General Assembly and subsequent meeting with a legislator led the VDH to undertake a second study that examined different ways the Department could facilitate the transition of direct services from licensed health department staff to the private sector. These developments, coupled with ongoing constituent lobbying, suggested the need for further changes to the program, and the VDH responded in 2013 by initiating the SHIFT process.¹

The SHIFT stakeholder advisory committee was convened in July 2013 "to 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." The SHIFT committee reserved dates for eight in-person meetings and met five times. The meetings progressed through sharing and gathering information, identifying issues, developing a range of ideas, refining these into a set of draft proposals, then testing for consensus and refining and building consensus recommendations.

¹ The 2006 study, "VDH Re-Engineering Initiative, Onsite Sewage System Program," was prepared by E. L. Hamm And Associates, Inc. The 2011 study, "Private Sector Service Delivery for the Onsite Sewage and Water Supply Program," was prepared by the VDH for the Honorable Delegates Robert D. Orrock, Sr., Chairman, House, Welfare and Institutions Committee and Lynwood W. Lewis, Jr., House District 100.

Although the committee had considerable diversity of opinions, it ultimately agreed by consensus to the following seven recommendations. It also discussed the potential for a number of other recommendations, which are described later in this report.

1. Regulatory Oversight

VDH must provide regulatory oversight, including all duties that do not require a license. More specifically, VDH will conduct inspections, manage policy, draft and issue operating permits, and maintain and manage records and data.

2. Encouraging Options

VDH should implement a statewide policy as soon as possible that applicants be encouraged to use the private sector for new construction services. Strategies to use:

- Educational/Disclosure Strategy: VDH should provide educational materials to applicants outlining the limits of VDH services and encourage applicants to obtain private services.
- Service Provider Strategy: VDH should provide/make available to consumers the names and contact information of private sector providers willing to provide work in that Health District (through a mechanism such as a website or roster containing data obtained from DPOR).

3. Review Documentation

All Level 1 and 2 reviews will be documented with standard VDH forms. Copies of all official documents shall be sent to the OSE/PE after the review has been completed.

4. Work Product Expectations

VDH should implement a policy as soon as possible that requires VDH and private sector work to meet the same work product expectations.

5. Work to be Done Under Licensure

Everybody who is doing site evaluation and design should be doing it under the auspices of a licensed individual.

6. Internal Policy

The VDH policy (GMP 51) must be revised to reflect the new proposed model.

7. Reporting

The VDH must have clear/transparent reporting. For any changes to existing practices, the VDH QA/QC must be revised to address the newly proposed model.

The committee discussions revealed a complex history, differing perceptions of need, and differing ramifications for the various stakeholder constituencies. Given the variety of issues, each consensus recommendation represents a statement of principle that can guide the VDH in its path forward toward maximizing use of the private sector while protecting public health and safety.

The two most important overarching consensus statements of principle relative to the committee's charge are that the VDH should continue its work as the regulatory oversight agency and that it should also implement a policy to encourage use of private sector services. The remaining five consensus statements can be viewed as important strategies for achieving these overarching goals. In particular, there is strong support for all soil evaluation and design work to be done under licensure, or under the auspices of someone with a license, with a common set of "work product" standards that will apply to all licensees.

Core differences did emerge during the process. Some of those who proposed that the VDH should cease all new soil evaluation and septic design beginning in 2014 continued to advocate for this all the way through the process. Some moved away from this position as they learned more from other stakeholders. On the other hand, some of those who may have been uncertain about the degree to which they supported increased private sector participation became more certain through the process that they wanted to retain the VDH as a service provider.

While committee members often expressed agreement on big principles – such as the goal to increase private sector participation – specific proposals to move these big ideas forward often failed to gain sufficient traction because of core differences. A number of ideas were agreed to in principle but ended in impasse about specific actions the VDH should take to enact those principles. It was these core differences, ultimately, that led to the conclusion by IEN, in consultation with the VDH and the planning committee, that a true impasse had been reached following the last meeting on October 31 and that further in-person meetings of the committee would not be productive.

While some private sector evaluators and designers strongly favored an accountable programmatic shift of onsite septic services to the private sector on a defined timeline, with some expressing a strong sense of urgency, most of the other stakeholders groups argued for a more gradual approach. The other stakeholders do not oppose greater use of the private sector, but they also do not share some in the private onsite evaluation and engineering sector's sense of urgency. They support a deliberate, less mandated, more incentivized approach in which the extent of shifting to private sector services is gradual and, most particularly, in which VDH continues to have discretion to provide services in circumstances that it determines are appropriate.

The work of the SHIFT process was productive in several ways. The process surfaced stakeholder concerns and values, revealing where these were shared and where they differed. While the E.L. Hamm study of 2006 and the VDH study of 2011 focused on how the onsite septic program could be improved, and primarily on ways to increase efficiencies through use of the private sector, this stakeholder process surfaced additional stakeholder concerns and values.

The SHIFT process did not result in a clear consensus path to achieving the objective of increased or maximal use of the private sector in the onsite sewage program. However, the

process and resulting information can help guide VDH efforts to create a path forward that is acceptable to the broadest possible range of stakeholders. Additionally, through this process of mutual education, stakeholder interest groups were able to gain insight into each other's needs and concerns. As they gained this insight, some participants actively sought to find ways to address those concerns.

By allowing this mutual education and discussion, the process has built capacity for collaboration and discussion among stakeholders in the future. In this light, the process laid an important foundation for future decision-making by the VDH, and for collaboration among the onsite septic program stakeholders.

BACKGROUND

The Virginia Department of Health (VDH) Division of Onsite Sewage and Water Services regulates the siting, design, and construction of onsite septic systems. Use of the private sector for evaluating soils and designing onsite septic systems began when the 1999 General Assembly mandated sweeping changes. The VDH was required to accept private evaluations and designs from Authorized Onsite Soil Evaluators (AOSEs) while it continued to provide regulatory oversight for the program, now including work performed by the private sector. Until then, VDH had performed all direct services for its onsite septic program, except for engineering designs and occasionally solicited advisory reports from the private sector.

This shift in the program precipitated further discussions about the role of the VDH in the industry and goals for the future. During the building boom of the 2000s, continuing backlogs and stresses on the program motivated the VDH to commission a study by E.L. Hamm & Associates, which examined ways to improve the VDH business model and processes. The study, published in 2006, found that in the climate of rapid residential development of that period, demand for onsite services was outstripping the VDH's capacity, leading to backlogs and competition for work. It recommended that "the VDH hand[] over the delivery of the direct services of site and soil evaluations, system design and system installation inspection to the private sector . . . allow[ing] for the free and open market to stabilize the process." Further, it recommended that VDH maintain responsibility for oversight and regulation, allowing it "to focus its resources in areas that can more fully realize its public health mission and assure that public health and groundwater supplies are adequately protected."

A second report was undertaken by the VDH in 2011 in response to HB 2185, which was tabled by the General Assembly with the understanding that VDH would initiate a study to examine how it could facilitate the transition of direct services from licensed health department staff to the private sector. The tabled bill would have required that a site and soil evaluation report be provided by a private OSE/PE for every onsite sewage system permit, certification letter, or alternative discharging system. The VDH report outlines five key observations and several associated options for each, focusing on the complexity of the system and the flexibility needed in implementing changes.

Today, the VDH processes over 14,000 onsite sewage and well permits per year, about 35 percent of which include private sector soil evaluations and designs performed by the state's 170 PEs who perform onsite sewage work and 439 OSEs (about half of whom are VDH staff). In the 32 health districts that have onsite sewage programs, 3 percent to 75 percent of applications include private sector work.

Discussion around facilitating greater private sector involvement in direct service delivery continued into 2013, when a group of professionals met with the VDH and Delegate Michael Watson to discuss the need to move forward. In response to these developments, the VDH initiated the SHIFT stakeholder advisory process to answer the question of "How can we

maximize private sector involvement (provision of direct services) to the greatest extent possible.”

At the outset of the SHIFT process, the VDH characterized this question as complex and one that it could not answer or act on unilaterally, hence its desire to convene a stakeholder advisory committee with independent facilitation. While the VDH had considered using the ongoing Sewage Handling and Disposal Regulations Advisory Committee (SHADAC) for this purpose, it decided that the topic required a separate facilitated process for two reasons: (a) not all of the important stakeholder interests are represented on SHADAC, and (b) the VDH itself needed to be represented at the table because of its own staff interests in the future of the program.

COMMITTEE CHARGE

The SHIFT stakeholder advisory committee was convened with the goal of developing consensus recommendations to advise the VDH on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment.

The VDH outlined a detailed charge for the SHIFT advisory committee, requesting its advice on three key issues. It asked the advisory committee to outline core roles and responsibilities for the VDH and for the private sector, to identify policies (regulatory and/or legislative) that will be needed to facilitate the shift toward greater private sector participation, and to identify anticipated fiscal impacts and suggest desirable funding mechanisms. (*See table below for the full SHIFT charge.*)

The committee discussed at length all of the topics included in its charge, and developed numerous ideas that addressed the different elements of the charge. The committee's ideas were narrowed and refined into 31 overarching draft proposals for the committee's final discussion and consideration, and a number of sub-recommendations.

The full listing of committee ideas can be found – and their evolution traced – in Appendix 4: SHIFT Stakeholder Advisory Committee Meeting Summaries, and in particular in the summaries for meetings 2 to 4. The final set of 31 draft proposals can be found in the summary for meeting 5.

The committee was able to achieve consensus on seven recommendations. While committee members often seemed to agree on big principles – such as the goal to increase private sector participation – specific proposals to direct VDH actions could not gain sufficient support because of core differences that had crystalized during the process. Some of those who believed that the VDH should immediately cease all soil evaluation and septic design continued to advocate strongly for this all the way through the process. On the other hand, some of those who may have been uncertain about the degree to which they supported increased private sector participation became more certain through the process that they wanted to retain the option of using the VDH as a provider of site and soil evaluation services. A number of the final proposals came very close to gaining consensus support but ended in impasse when the details were discussed and core differences surfaced. It was these core differences, ultimately, that led to the conclusion by IEN, in consultation with the VDH and the planning committee, that a true impasse had been reached and that further efforts to reach consensus would not be productive.

The work of the SHIFT process was productive in several ways. The process surfaced stakeholder concerns and values, revealing where these were shared and where they differed. While the E.L. Hamm study of 2006 and the VDH study of 2011 focused on how the onsite septic program could be improved, and concentrated primarily on ways to increase efficiencies through use of the private sector, this stakeholder process surfaced additional stakeholder concerns and values. This information can help guide VDH efforts to create a path forward that

is acceptable to the broadest possible range of stakeholders. Additionally, through this process of mutual education, stakeholder interest groups were able to gain insight into each other's needs and concerns. As they gained this insight, some participants actively sought to find ways to address those concerns. By allowing this mutual education and discussion, the process may have built capacity for collaboration and discussion among stakeholders in the future. In this light, the process laid an important foundation for future decision-making by the VDH, and for collaboration among the onsite septic program stakeholders.

THE SHIFT ADVISORY COMMITTEE 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.

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.
 - 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**?
 - i. Identify challenges for change and mitigation strategies.
 - ii. 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.
 - vi. Identify ways to improve or change the Department's fee structure to help increase privatization of direct services.
 - vii. Identify short and long-term funding needs to sustain the Department's implementation of core functions.
 - viii. 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?

COMMITTEE PROCESS

In May 2013 the VDH contracted with the University of Virginia Institute for Environmental Negotiation (IEN) to convene a group of stakeholders who could advise the VDH on how to increase private sector participation in the onsite septic program, in the context of ensuring that public and environmental safety and health would continue to be safeguarded. The process envisioned was a classic consensus-building effort to occur over a period of five months, with a report completed by December so that it could be submitted to interested legislators in time for consideration by the 2014 General Assembly. This process would be called SHIFT for “Safety and Health in Facilitating a Transition.”

IEN and VDH began the SHIFT process by convening an advisory planning team comprised of six representatives from five key sectors: the VDH central office, a VDH local health district, the Virginia Association of Counties (VACo), the Home Builders Association of Virginia (HBAV), onsite soil evaluators (OSEs), and the Piedmont Environmental Council for the environmental sector.

The IEN discussed a variety of process options with the planning team, including whether to conduct pre-meeting interviews with key stakeholders, whether to plan for a collective site visit or field trip, whether to encourage committee work groups, and preferred dates and times for the advisory committee meetings. The planning team also provided critical assistance in identifying appropriate stakeholders to invite to participate in the advisory committee.

Guided by these discussions, the IEN began its work of convening the SHIFT advisory committee. It extended invitations to over 30 individuals representing core interests in Virginia’s onsite septic program. To ensure that participants would be prepared, and that the process would get off to a good start, the IEN attempted to have personal phone interviews with each invitee. During these phone interviews, the IEN reviewed the official SHIFT charge, discussed the role and responsibilities of participants in representing their interest group, and began to identify key issues for discussion. During the interview, IEN 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?

A number of invited individuals were unable to participate, including two elected officials from interested counties. Ultimately, nine core interests were represented on the SHIFT committee:

- Builders and realtors
- Local government
- VDH staff (central office and local health districts)
- Homeowners and residents
- Environmental interests
- Well drillers
- Installers
- Manufacturers
- Private sector onsite sewage system professionals (OSEs and PEs)

The IEN telephone interviews revealed a number of core stakeholder concerns and issues, described below. (A full report of these issues and concerns can be found in Appendix 2: Preliminary Scan of Stakeholder Concerns and Issues.)

1. VDH Roles in Design/Evaluation versus Oversight/Enforcement

Some stakeholders expressed concern about a perceived conflict of interest in VDH's dual role as provider of regulated services and regulator/overseer of those same services. Concerns were also expressed about how VDH would ensure oversight in the future if its involvement in evaluation and design was minimized.

2. VDH Staff, Capacity and Budget

Some stakeholders expressed concern that some systems designed by VDH staff are subpar to the private industry standard, and 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.

3. Licensing and Standards

Some stakeholders expressed concern that the VDH was holding its own staff to different (and lower) standards than their private sector equivalents.

4. Market/Competition

Some stakeholders expressed concern that the VDH work, which they view as subsidized, affords a competitive advantage to VDH and has prevented the private sector from being hired to do more of the work.

5. Geographic and Income Considerations

Some stakeholders expressed concern that a shift toward the private sector could leave more rural areas of the state underserved, and that low-income people would not be able to afford septic systems, which could impair public and environmental safety and health. Some stakeholders expressed satisfaction with the current system, and some hoped that the VDH would continue to at least provide a safety net for soil evaluation and septic design.

6. Inconsistent Interpretation and Enforcement of Regulations

Some stakeholders perceive inconsistent interpretation and enforcement of state policies and regulations by different health districts, and expressed frustration with this situation. They expressed concern that this can make it hard for the private sector to work in different regions and remain compliant with statewide regulations.

7. Repairs after the SHIFT

Some stakeholders asked about what will happen to onsite septic systems that were evaluated and designed by VDH and may need repairs in the future. Will the private sector need to assume responsibility for these, or will the VDH be responsible for repairs?

8. VDH Capacity to Implement Recommendations

Overarching questions were raised by some about whether this process would be fruitful based on perceptions of past VDH inaction on similar issues.

The first of five in-person stakeholder meetings was held on July 18, 2013. At this meeting, IEN led committee members in developing shared protocols/groundrules for working together. Also at the first meeting, IEN introduced the concept of consensus, which includes three key components, and discussed how any member of the committee could request a test for consensus at any time during the process. After a brief discussion, the committee agreed by consensus to use the following definition.

Consensus Defined

- 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, not just the parts they like best.

Although working by consensus can be more difficult and can take longer than a typical majority vote, IEN described a number of benefits that can result from working by consensus. 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. To achieve consensus, group members must work to satisfy the needs of all participants, not just their own needs. This means that everyone's views are given real consideration. Finally, as a practical matter, decisions with broad-based support are more likely to be implemented.

At its first meeting the committee also worked to identify criteria by which they would later judge proposals, to ensure success of the SHIFT process. The following criteria were identified.

SHIFT Criteria for Success

The SHIFT to more private sector participation in onsite septic program should:

1. Protect Environmental and Public Health
2. Build Public Trust
3. Promote Shared Responsibilities and Ethics
4. Assure Affordable Access to Services For All
5. Be Funded Appropriately and Sustainably
6. Be Clear about Roles and Expectations
7. Be Supported with Enthusiasm by All (VDH + Private Sector)
8. Foster Public Awareness and Education

In total, the SHIFT Stakeholder Advisory Committee met for five in-person meetings, progressing through sharing and gathering information, identifying issues, developing a range of ideas, refining these into a set of draft proposals, then testing for consensus and refining and building consensus recommendations. Below is a brief overview of the discussion and outcomes at each meeting.

Meeting 1 (July 18th): In addition to the foundational committee work described above, the first meeting's agenda included time for a substantial presentation by the VDH on the history and current state of the onsite septic program. Committee members shared their concerns and interests and developed a list of key issues they hoped to address through the process. They also identified over a dozen pieces of information or data that they felt would be helpful to their deliberations, and asked if the VDH would be able to provide this information by the next meeting.

Meeting 2 (August 8th): In advance of this meeting, the VDH compiled information and data in response to committee requests and provided this to the committee. During the meeting, the VDH provided a presentation to explain the data and answer questions. Participants then worked on learning and building greater understanding of each other's concerns, and brainstormed ideas for ways to facilitate increased use of the private sector while protecting public health and safety. During these discussions, members began identifying areas of agreement within the committee. Finally, the committee submitted another information request to the VDH.

Meeting 3 (August 29th): In advance of the meeting, the VDH continued to compile and provide information requested to the committee. Participants worked in small groups to generate more specific ideas for ways to facilitate increased private sector involvement while protecting public health and safety. In the morning the small group discussions focused on three topics drawn from the committee charge: Roles and Responsibilities, with attention to Access and Affordability; Facilitating an Orderly Transition; and Fee Structure/Funding and Transition. In the afternoon, the final three topics drawn from the committee charge were discussed: Quality Assurance/Education/Professionalism; Assuring Checks and Balances; and Economic Impacts. Committee members rotated through all of these discussion stations so that each was able to contribute ideas for each topic. During these discussions, members continued to identify areas of agreement within the committee. Finally, the committee submitted further information requests to the VDH.

Meeting 4 (September 26th): In advance of this meeting, VDH continued to compile and provide information requests to the committee. Also, the IEN compiled a "single text" of all member proposals to date and posted these on an online system that allowed interactive member commenting. During this meeting, participants carefully reviewed the draft proposals contained in the single text document. Participants shared their concerns, identified potential areas of agreement, and further refined the language of the proposals.

Meeting 5 (October 31st): In advance of this meeting, the IEN continued to seek feedback and work with committee members to further refine the proposals. The meeting originally scheduled for October 10 was cancelled by IEN in response to communication from committee members who expressed substantial concerns about the SHIFT process, as well as about relationships and behaviors within the committee. The IEN considered this atmosphere a serious impediment to a productive meeting and decided a more constructive approach would be to work individually with committee members to develop more refined proposals for

committee consideration. The IEN reshaped, refined, and posted online a final set of 31 committee member proposals for an initial test for consensus. At the meeting, participants discussed the results of the online test for consensus and worked to build consensus on a number of proposals that the online consensus test had indicated were likely to garner the most committee support. The committee successfully reached consensus on seven recommendations.

CORE COMMITTEE ISSUES

A number of core issues dominated the SHIFT process. Some of these issues were raised by members at the beginning and others emerged during the course of the process.

Private sector onsite soil evaluators (OSEs) and professional engineers (PEs) comprised one of the largest interest groups represented on the committee, and some of them came into the process with strong concerns about the current program and clear goals for the future. These licensed professionals deliver site and soil evaluation and onsite septic design services to homeowners and builders throughout the state. One core concern articulated by some of these members is that the VDH's staff of licensed OSEs offer the same services at a lower cost because of public funding that subsidizes the agency's program costs. This situation is fundamentally unfair in their view, as it bypasses free market competition and creates subsidized competition with the private sector. As a result, these OSEs/PEs articulated a strong preference that the VDH focus on its regulatory role and shift all primary service delivery of new evaluation and design to the private sector, with a few clearly defined exceptions such as when low-income residents are in need of emergency repairs. Some private sector evaluators and designers strongly favor an accountable programmatic shift of onsite septic services to the private sector on a defined timeline, with a few expressing a strong sense of urgency that the shift begin as soon as possible in 2014.

A related issue expressed by some of the OSE/PE members was that VDH's active role in both service delivery and regulatory oversight presents a fundamental conflict of interest. They expressed the concern that this situation – a regulatory agency responsible for regulating its own work – is leading to poor oversight and lower work products industry-wide. They believe this situation is not in the public's interest, as it does not adequately protect public and environmental health and safety. They advised that a shift of most work to the private sector, coupled with more rigorous oversight by the VDH as well as heightened standards for work delivered by VDH under limited exceptions, would remedy this conflict of interest.

These issues had been articulated prior to the inception of the SHIFT process and were largely responsible for the VDH's decision to convene the SHIFT process. VDH expressed at the first meeting that it intended to facilitate a shift of as much work as possible to the private sector while protecting public health and safety – that it is a matter of “when,” not “if” – and that it wanted to do so in a way that satisfied all stakeholder interests. VDH further explained that the political reality is that a state agency can make major changes most easily if the stakeholders

are able to reach consensus about what changes are needed. Hence, if the SHIFT process could develop consensus proposals this would greatly assist the VDH in its goals to maximize use of the private sector in the onsite septic program.

While many of both the OSE/PE members and the VDH staff entered the process with the shared goal of shifting as much work as possible to the private sector, other stakeholder members expressed a variety of concerns. These concerns centered on the perception that VDH has for decades delivered good work at an affordable price, providing a valuable service to Virginia residents while also protecting public health. These members expressed a long history of trust in the VDH to act in the public's interest, and a concern that the rapid elimination of the VDH as a service provider will remove an important option for builders and homeowners as well as a critical safety net for low-income homeowners.

The Home Builders Association of Virginia (HBAV) and the Virginia Association of Counties (VACo) both expressed reservations with the idea of a wholesale shift in service delivery to the private sector. While the HBAV expressed strong support for encouraging more use of the private sector, it also expressed that its member builders wish to retain the option of VDH services. Two reasons were expressed by the HBAV for the need to retain this option: (1) The private sector may grow or contract, and there may not always be enough private sector providers in all regions of the state to provide timely service, or to provide any service at all. The HBAV expressed that, for builders and homeowners to be able to obtain timely service, it is important for the VDH to retain expertise in and to offer these services, both as an option and as an important backstop to the private sector. (2) The provision of onsite septic services is an important public service and should remain affordable to the average homeowner. The HBAV expressed concern that a wholesale shift to private sector services could jeopardize affordability, particularly in regions that had little competition, and that more expensive services could place a strain on homeowners. The real estate and homeowner representatives on the committee expressed that they shared these concerns about affordability and access to services.

The VACo member also expressed support for allowing counties and health districts to encourage more use of the private sector but stated that VACo could not support any statewide mandates that would preclude the VDH provision of services by mandating use of the private sector. The member relayed that counties have suffered from numerous unfunded mandates and are wary of additional mandates handed down by the state. In this situation, county governments have relied on the VDH for decades to provide important environmental health services to their residents and therefore have a longstanding relationship of trust with the VDH. Many of them view the VDH as affordable and reliable, and trust that its staff will act in the best interests of public environmental health. In some counties, there are higher levels of private sector participation, and in others there are lower levels; this flexibility, VACo contends, allows localities and regions to encourage a mix that best meets the needs of their housing industry. Some VACo members wrote letters and contacted their representative on the committee specifically to oppose the elimination of VDH services, expressing two core concerns. Some expressed that pressures on private sector providers are different, as they must make a profit

to stay in business, and the private sector therefore could not be relied on to offer low-income and subsistence residents the least-cost affordable and effective designs, or even necessarily to act in the best interests of the county's environmental health. A second core concern was that a mandate to use the private sector would at some point lead to an additional monetary burden on counties, particularly those with significant numbers of rural low-income residents.

A core concern for a member representing manufacturers was that 100 percent of installed systems should receive a final inspection from VDH, and that this inspection should include the production of "as-built" records for the system.

A member representing septic system installers reported at the last meeting during the public comment period that, through outreach to 20 other installers in all regions of the state, the member was able to successfully contact nearly a dozen of them. This member wished to relay their concerns as part of the public comment, in order to reflect their perspectives. The member reported that, although the number of installers who commented was small (11), an overwhelming number (91 percent) did not want the VDH to give up service delivery. The installers contacted generally stated that VDH delivers a good product, and while some expressed concern that some private sector designers have demonstrated a lack of professionalism, most generally felt additional privatization of the onsite program would be detrimental to the industry until corrections or improvements had been made to the existing program.

A committee member representing environmental interests expressed support for retaining the option of VDH services in all regions, while also expressing strong opposition to public subsidies that support new private homes with onsite septic systems in areas that cannot sustain the environmental impacts to groundwater and surface water quantity and quality. This member argued that the state should not support this activity when it must later turn around and use taxpayer money to address the environmental impacts. If the state is to continue offering this service, it should at least raise its fees to have parity with the private sector, so that public funds are no longer used to support the interests of private homeowners. The only exception for using public funds that this member could support would be for the VDH to offer subsidized services for repairs of existing systems for low-income homeowners, and to replace outhouses with onsite septic systems for already existing private homes.

The VDH also shared the results of its internal efforts to identify and represent the different interests and concerns of its local health district and central headquarters staff. While the SHIFT process was underway, the VDH held eight internal meetings in which VDH district staff had an opportunity to share concerns as well as ideas for facilitating the shift of services to the private sector. Many VDH staff do not share the concern that there is an inherent conflict of interest in serving as both a provider and regulator of services. The agency routinely receives legal advice and VDH staff report that the agency's current program, which includes providing direct service to the public, complies with applicable laws and regulations. Some VDH members expressed that the agency has a long track record of acting reliably in this dual role with good faith and has demonstrated its ability to protect public health and safety. While some members

expressed concern about the implications of shifting all services to the private sector, some of the VDH representatives supported the prospect of a shift and were willing to consider a variety of mechanisms to facilitate that shift. A core concern expressed by the VDH was the unknown fiscal implications of a shift: would counties that currently support the presence of local health district offices through significant cost-sharing want to reduce their cost-sharing? Would the VDH then not only have to address the loss of revenue from no longer providing septic services but also a loss of financial support from the counties? As a result, these members strongly advocated that whatever solutions were found, they must be revenue neutral for the VDH.

After the fifth and ultimately final meeting of the committee, while the facilitators were considering the possibility of a sixth meeting, a number of committee members expressed a desire to continue working together. They stated that, with more face-to-face time and the ability to hear each other's concerns, more areas of consensus might be found. Others on the committee stated that more time together would not be able to produce more consensus recommendations, as core issues dividing members had become clarified through the process and, through this increased understanding, some member positions had actually hardened.

More specifically, some members who proposed that the VDH should cease all new soil evaluation and septic design beginning in 2014 continued to advocate for this all the way through the process. Some moved away from this position as they learned more from other stakeholders. On the other hand, some of those who may have been uncertain about the degree to which they supported increased private sector participation became more certain through the process that they wanted to retain the VDH as a service provider. These members expressed the view that the VDH should remain a viable option, as well as a safety net, to ensure that low-income and underserved areas continue to have access to onsite septic services.

The facilitators were also acutely aware of the growing divide among committee members, reflecting core differences. While committee members often seemed to agree on big principles – such as the goal to increase private sector participation – specific proposals to move these big ideas forward did not gain sufficient traction because of core differences. A number of ideas were agreed to in principle but ended in impasse when the details were discussed. More specifically, some members felt strongly about mandating a transition toward greater private sector participation, while other members felt equally strongly that they wanted to encourage a transition while avoiding any mandates. It was these core differences, ultimately, that led to the conclusion by a joint consultation of VDH, the planning committee, and the IEN that a true impasse had been reached, and that further efforts to reach consensus within the committee would not be productive.

PROPOSALS EVALUATED BY THE COMMITTEE

Between the first and last meetings, the committee identified and discussed numerous issues and developed a wide range of proposals for improving the program and facilitating the transition of more service delivery to the private sector. Over the course of the meetings described above, proposals were explored, narrowed, consolidated, and clarified, and some were eliminated. The meeting summaries contained in Appendix 4 include the draft proposals in each iteration. Discussed below are the proposals as they emerged and were tested for consensus at the last meeting of the SHIFT committee. Under each proposal is an overview of the associated concerns and interests articulated by committee members. Recommendations that reached consensus are listed first.

SHIFT Consensus Recommendations

The committee was able to reach consensus on seven broad conceptual approaches to increasing private sector provision of onsite septic services. Most of these consensus recommendations address the committee charge concerning roles and responsibilities, and one addresses a way to encourage the transition toward greater private sector participation. The two most important overarching consensus statements of principle relative to the committee's charge are that the VDH should continue its work as the regulatory oversight agency, and that it should also implement a policy to encourage use of private sector services. The remaining four consensus statements may be viewed as important strategies for achieving these overarching goals.

1. Regulatory Oversight: VDH must provide regulatory oversight, which includes all duties that do not require a license. More specifically, VDH will conduct inspections, manage policy, draft and issue operating permits, and maintain and manage records and data.

This proposal was seen as the *sine quo non*, or the critical baseline, for any transition toward greater use of private sector services. Everyone on the committee strongly agreed that the appropriate role for the VDH is to provide regulatory oversight.

2. Encouraging Options: VDH should implement a statewide policy as soon as possible that applicants be encouraged to use the private sector for the above construction services.

Strategies to use:

- **Educational/Disclosure Strategy: VDH should provide educational materials to applicants outlining the limits of VDH services and encouraging applicants to obtain private services.**
- **Service Provider Strategy: VDH should provide/make available to consumers the names and contact information of private sector providers willing to provide work in that health district (through an easy mechanism such as website or roster maintained by the private sector).**

This proposal was considered an important strategy to facilitate the transition to greater use of the private sector. Informing applicants of their options and the potential impact of choosing a designer that was not the original evaluator would be good customer

service. Many local health departments already do this. If consumers are made aware of who they can call for help in the private sector, and the limitations of using the VDH services, they are more likely to seek the services of the private sector. This received strong support from the full committee.

3. Review Documentation: All Level 1 and 2 reviews will be documented with standard VDH forms. Copies of all official documents shall be sent to the OSE/PE after the review has been completed.

This proposal was seen by some in the private sector as an important strategy for ensuring a paper trail for regulatory oversight of all service providers, whether performed by the private sector or by VDH staff. This received strong support from the full committee.

4. Work Product Expectations: VDH should implement a policy as soon as possible that requires VDH and private sector work to meet the same work product expectations.

Some private sector providers have expressed significant concern that there is a double standard for work product expectations and that VDH staff are not held to the same standards for work product nor provided the same independent field reviews, leading to an unequal playing field and work that reflects poorly on the overall profession. The VDH does not share this view of its staff's work product and has received legal advice that it is within its power to establish different internal operating procedures.

However, the VDH has expressed a desire and willingness to respond to stakeholder concerns and has explored a variety of ways it may align the work product expectations. Most parties on the committee agreed that, if and when work product expectations are aligned, they should not be watered down. They believe it would not be beneficial to public and environmental safety and health for standards to be weakened.

To increase the quality of onsite designs, some members expressed the need for 100 percent Level 2 reviews (onsite inspection prior to installation). While some believe this is probably not financially feasible, they advocate for more than the currently required 10 percent review. Others also urge that Level 2 reviews should be conducted wherever it is deemed necessary, and on a sliding scale up to 100 percent of the time in areas where soils present high risks. Most members generally concur that more Level 2 reviews would eliminate problems down the road and enable better designs.

This proposal addressed one of the core concerns of some of the private sector OSEs/PEs. They expressed strong concern that the VDH's OSE staff are not obligated to provide the same work product standards as the private sector, and challenged the legality of this practice.

While the VDH expressed that its legal counsel supported the VDH right to decide how its employees performed tasks, because VDH staff is legally accountable in a way that the private sector is not, the agency announced a willingness to align work product expectations. With this announcement, the remainder of the committee was willing to support the proposal as well. The private sector expressed concern that the VDH not use this to water down work product expectations, but rather to raise standards for all.

5. Work to be done under Licensure: Everybody who is doing site evaluation and design should be doing it under the auspices of a licensed individual.

This proposal was also important to some committee representatives from the private sector who expressed that this practice is necessary to safeguard public health and the environment. It was also perceived by some to be a component of ensuring that the VDH and the private sector deliver parallel work products.

This proposal received strong consensus support from the full committee during meeting 3.

6. Internal Policy: The VDH policy (GMP 51) must be revised to reflect the new proposed model.

GMP 51 is “intended to provide a framework to prioritize applications and to determine which applications will result in construction permits and which applications will result in certification letters,” with the hope of eliminating time spent designing and drafting permits for systems that are never installed. The policy encourages the use of private soil evaluators, which it notes will typically result in faster processing times. It also directs that “when an application for a certification letter is accompanied by supporting documentation from a private evaluator, the application will be placed in a higher priority group.” This procedure for prioritizing applications is mandatory under the policy when the processing time exceeds 10 working days.

This proposal was seen as important by some members to ensure that all VDH policies are aligned and supportive of the same outcomes.

Everybody was able to support this proposal; while they believed that this should be an obvious part of any shift toward moving services toward the private sector, they were willing to articulate it as a recommendation and gave it full support.

7. Reporting: The VDH must have clear/transparent reporting. For any changes to existing practices, the VDH Quality Assurance/Quality Control (QA/QC) must be revised to address the newly proposed model.

This proposal was particularly important to some committee representatives from the private sector, who expressed frustration with the inability to obtain information easily about the program. Transparent reporting and aligning the QA/QC to the new goals of maximizing use of the private sector would provide an important improvement in the program.

This proposal received strong support from the full committee.

Additional Proposals Considered

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

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

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

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

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

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

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

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

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

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

D. “Once Touched” Strategy – Encouraged Strategy: For lots previously privately evaluated, applicants should be encouraged to contact the original private entity to discuss advantages and disadvantages of utilizing them to produce the design. Applicants would be informed of their choice to (1) use the original information on file and the original or another private evaluator or (2) use the VDH, while understanding that the system designed by someone other than the original evaluator could be substantially different from what was preliminarily proposed. This places no mandate on applicants but helps them understand their options, educates them on the process, and encourages them to seek the advice of original private sector entity.

And

Corollary to the “Once Touched” Encouraged Strategy: If VDH produces designs for new construction permits, it must conduct and fully document its own independent soil/site evaluation as the basis for its design. VDH personnel would be prohibited from using private sector evaluations as the sole basis for producing designs for new construction permits. (i) This would not prohibit VDH from using the exact location as the private sector proposed for the system. However, VDH would make it clear to their staff that no responsibility for the functioning of any system designed by VDH in a site previously proposed by a private sector evaluator will rest with the private sector evaluator. (ii) This provision is not intended to prohibit VDH from performing proper oversight. VDH staff should be encouraged to file a complaint with DPOR if the findings of their independent evaluation yield significantly different results from the private sector.

These proposals were advocated by many members as workable and effective ways to quickly increase use of the private sector. One of the reasons this was considered important to the private sector was a concern that private sector providers would be held liable for their initial site evaluation work that is later taken to completion by the VDH. If the VDH wouldn't assume liability, then the work (and therefore liability) should stay in the private sector.

It is standard practice among most private sector OSEs to perform their own independent soil/site evaluations if they are asked to design a system in the same location where others previously completed the initial evaluation. It is not uncommon for this second evaluation to reveal additional information that requires a modification to what was originally planned, allowing a better system to be designed and, presumably, a greater level of protection of public health and the environment to be achieved. Although this may already happen in certain localities, this practice is not necessarily statewide policy within VDH. Some believe that VDH may not perform a second, independent evaluation because they believe they are then less responsible for any soil-related problems that ultimately arise with the system. Others may believe that it opens up a “can of worms” if a second evaluation requires changes to be made to a previously approved site and, therefore, it is not worth the trouble to conduct an independent evaluation. Regardless of the reasons, some members of the SHIFT believe it is appropriate and important to institute a best practice for protecting both public health and the environment that would require VDH to base its designs on its own independent evaluation, regardless of whether a private soil/site evaluation is already on file.

The proposals were not acceptable to a number of members who could not support a mandate and whose constituencies wish to preserve choice in all circumstances.

- E. Online System: To enhance the state’s record keeping and tracking capacity, VDH should develop an online application system as soon as possible, which may include the ability for the private sector to bid on work. (This might require the ability to accept electronic seals, hence legislative action.) This online system would have two primary functions:**
- a. Consumer Service Strategy: Make applications available online and allow/encourage the private sector to contact applicants and offer their services, as well as encourage applicants to contact the private sector (per Educational/Disclosure Strategy above). After some period (e.g., 3 to 5 days), if the owner does not update the application to indicate that a private sector practitioner has been retained, the local health department would process the application as a bare application (i.e., VDH would be the “provider of last resort”).**
 - b. Free Market Strategy for Backlogs: The site would show when a backlog exists, which would provide business leads to the private sector who may be able to provide services more quickly than the local health department. The code should be amended to eliminate the mandate that the agency pay for the private sector providers in the event of a backlog.**

Most committee members favor greater transparency from VDH, expressing that it would be advantageous to both private sector providers and the public. Many members have also argued that transparency would encourage greater private sector involvement by providing them with a more complete picture of the industry and information about the market for services.

This proposal was supported by many on the committee who view the ability to submit applications online as a concept whose time is past due and that will simplify the process and make tracking and reporting easier. At the final meeting VDH announced its intention to develop an online system.

The proposal failed to garner consensus because of concerns about how the online system would be used. Strong opposition to using the system for online bidding was expressed. Strong opposition was also expressed for making homeowner information available to the private sector, as this could lead to unwanted solicitations. The VDH thanked the committee for its feedback, which it said it would use to help design a system that could be supported by stakeholders.

- F. Statewide Policy – Mandated or Policy Target Strategy: VDH should implement as soon as possible a statewide policy that requires applications for subdivision soil/site evaluation to use the private sector. VDH should continue the current practice of reviewing private sector work for Subdivision Approval and conveying the approval to local governments. Reviews included paperwork and field review as determined necessary by VDH.**
- a. Mandated Strategy (with Exemptions and Phased Transition): VDH should implement a statewide policy as soon as possible that the above services be done by the private sector, where there is sufficient competition and with availability for low-income relief.**

- b. Policy Target Strategy (with Exemptions):** VDH should adopt a policy equivalent to the “Hanover/Chickahominy Policy” and apply it uniformly and statewide. This policy aims for a minimum of 70 percent private sector and 30 percent VDH provided onsite septic soil evaluation/design work. The 30 percent should be reserved primarily for low-income (means-tested) and repair situations. VDH should be the provider of direct delivery of new construction services as a last resort.
- c. Exemption options for above strategies:**
 - i. Health districts with fewer than (X) applications per month could be exempt from this requirement. This will be helpful in low-income counties.**
 - ii. Phased transition: Further recognizing underserved counties with few application submissions per year, health districts/counties with (X) or fewer applications per month will have two years under the exemption to transition to the newly adopted policy.**
 - iii. There is deemed sufficient competition if there are two or more private providers who live within 30-miles of the project.**
 - iv. Applicants who meet a low income “means test” would be offered relief from a fund. The fees would not be lowered, but funds to pay the fees would be given to the OSE or VDH.**

This suite of proposals reflects the division among the committee, with some strongly supporting a mandated shift to use of the private sector and some supporting a hybrid approach such as that used by the Hanover/Chickahominy counties.

Currently, only two of 35 health districts in Virginia perform soils/site evaluation for the purpose of a Subdivision Approval. In 33 health districts, the VDH does not provide this service, but refers applicants to the private sector.

In the two health districts that do provide this service, Cumberland Plateau and Lenowisco, only three counties (Russell, Tazewell, and Scott) provide soils/site evaluation services, and only in specific situations. For example, in Russell and Tazewell Counties, the VDH will provide soils/site evaluation services only for subdivisions of three or fewer lots, meaning primarily family subdivisions. In 2010, Scott County processed two subdivision applications and the other two counties had none. In 2011, Scott County processed one and the other two counties none. In 2012, no subdivision applications were received. So far in 2013, Scott County has received one subdivision application and the other two counties none. All had been evaluated by AOSEs.

Given the current reality – that VDH has already moved out of the business of providing soils/site evaluation for subdivisions – there is a sense among many committee members that a recommendation that this subdivision service should be done by the private sector would not create any change or hardship in most Virginia counties (92 of the 95), would have no negative impact on public health or the environment, and would help to build private sector capacity in very rural low-income regions where additional capacity is needed.

VACo and other members on the committee opposed this mandate because they were concerned that the three counties it would impact have very little to no private sector

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. Internal Staff Evaluation: As the number of soil evaluations/designs undertaken by the VDH declines, VDH will need to change its employee work profiles so that employee performance is driven by realistic objectives and not a value of “X” number of permits issued per month.

This proposal stemmed from a concern that VDH staff evaluations provide a perverse incentive to not perform up to the desired professional standards – *i.e.*, the focus on quantity of permits issued should be replaced with a focus on quality of work. This proposal was seen as a way of improving the VDH staff OSE work products.

The proposal did not garner consensus for similar reasons to the above recommendation – some stakeholders were resistant to the idea of meddling in internal VDH employee policy.

N. Training: Private associations should (work with VT to?) provide training and funding for increasing private sector providers in areas that are underserved, so that rural communities can see a benefit from more private sector involvement.

This proposal stemmed from a concern that there will not be sufficient private sector providers in rural regions to enable a full transition of services to the private sector.

The proposal did not garner consensus because it was not seen as something that the VDH should be doing, but rather something the private sector should be doing, *i.e.*, that the marketplace should be taking care of. Concerns were also expressed about how this would be funded.

O. Alternative Systems:

- a. **No Alternative Systems: VDH should continue its current practice of not producing alternative system designs.**
- b. **VDH Design Alternative Systems: To enable the VDH to build the capacity of its staff, properly licensed VDH designers should have more flexibility to design systems appropriate to the site conditions. In certain circumstances, VDH employees who are licensed Alternative Onsite Soil Evaluator should be allowed to design alternative systems.**

These proposals stemmed from concerns that the VDH does not currently have expertise in designing alternative systems. Those who wish to move all services to the private sector did not want VDH to begin designing alternative systems. Others felt that it would be important for the VDH to build its internal technical capacity, to give it more flexibility.

Neither proposal garnered consensus because there were sufficiently strong sentiments on both sides, and neither group was able to convince the other.

P. Pump Systems: VDH should implement a policy regarding VDH performing conventional pump system designs. There are two options:

- a. **Eliminate Pump Designs: Substantially eliminate VDH direct delivery of pump system designs for construction permits. (Provisions could be made for VDH performing this service for the low income or in the case of extenuating circumstances.)**

- b. Provisions should be made for informing an applicant submitting a bare application that VDH will not design pump systems and, if the applicant's site conditions mandate that a pump is required, he will have to go to the private sector designer to complete the design. The applicant should be encouraged to contact the private sector prior to submitting the application and paying fees if the applicant believes that their situation may require a pump system. (This is not intended to prevent the applicant from applying to VDH, but it is focused on making sure they understand the limitations of using VDH before making an application.)**
- c. Amend Pump Policy: VDH should come up with categories of pumps in order to comply with the policy barring the use of proprietary products in designs while ensuring the installation of pumps with proper specifications.**

Designing a pump system is similar to designing an alternative system in that selecting and installing the appropriate components are critical in optimizing system performance in the short term and ensuring robustness of the system over the long term. Pump designs currently produced by VDH do not specify products due to the longstanding policy that prohibits VDH staff from specifying proprietary manufactured components in their designs, instead allowing the listing of only the minimum operational parameters for the pump and general guidance for the rest of the system. This situation has the potential to threaten public health.

These proposals stemmed from concerns that the VDH does not currently have sufficient expertise to design pump systems and, alternatively, that VDH should be able to design pump systems as long as it doesn't specify proprietary products.

None of these proposals garnered consensus because there were sufficiently strong sentiments on both sides, and members were not able to convince the other.

Q. Indemnification Fund: The Indemnification Fund should be expanded in addition to its current purpose to assist low-income citizens by subsidizing OSE/PE work. To assure checks and balances, it should be managed by an independent agent, such as DPOR or the Department of Planning and Budget.

- a. To provide steady funding into the Indemnification Fund, a portion of OSE certification/renewal fees should be allocated for the Fund.**
- b. To be able to access the Indemnification Fund, the OSE must offer a 1-year warranty and a 2-year window to make a claim (*i.e.*, have to notify installer there's a problem within the 1-year window and make the claim within 2 years).**

These proposals were intended to provide a workable strategy for assuring fair and affordable access to onsite septic services for all. If the VDH is to continue its regulatory oversight role, to protect public and environmental safety and health, it must be able to support the program financially.

Some members of SHIFT believe that the discrepancy between the cost of obtaining soil/evaluation work from the VDH and the private sector is one significant reason why use of the private sector has not risen beyond 30 percent, overall, in the state. They believe it would be important for the VDH fees to reflect the real cost of the services they provide. By raising their fees, VDH would help "level the playing field" with the private sector.

However, some members believe that the VDH service fees were never intended to reflect the real cost of providing those services. These members point to an earlier General Assembly decision that onsite sewage services were important to the commonwealth public health and therefore deserved to be subsidized to ensure affordability.

In addition, some members of SHIFT argue that low-income citizens cannot afford any increase in fees, and should not be required to go to the private sector to have septic systems designed beyond what they can afford. These members have said they are unable to support any increase in VDH fees.

The proposals did not garner consensus because there were too many concerns about the details of how this would work. The indemnification fund currently supports the VDH in events of problems or complaints, and this proposal might undermine its original purpose.

- R. Revenue Neutral: To ensure that the shift to increased use of the private sector does not financially impair the VDH's ability to continue to provide needed services, the VDH should reduce the application fees for applications with supporting work from an OSE/PE to a minimal amount (consider \$50-\$100?) and offset any revenue loss with new fees for other services (e.g., implement a fee for voluntary upgrade applications, courtesy reviews, some repairs, and "safe, adequate, and proper inspections").**

This proposal was offered by the VDH as a strategy to provide an economic incentive to use the private sector.

The proposal did not garner consensus because some members felt that no fees should be reduced at all because this would mean fewer revenues and more state subsidization of private sector work. Some members also felt that, if anything, the VDH should raise its fees to be on par with those of the private sector. Some members also questioned the need for new fees for other services.

- S. VDH Fee Raises: VDH should raise at least some of its fees, which would require legislative action.**

This proposal was supported by a number of members as a way to reduce the competition between the VDH and private sector and create more parity.

The proposal did not garner consensus because some members felt the possibility of legislative action was a non-starter and others opposed raising fees as they felt that would decrease affordable access to services.

- T. Affordability: Safeguards must be in place to ensure onsite septic systems remain affordable to low to moderate-income people. The VDH should remain a provider of last resort.**

This proposal reflected a core concern of a number of committee members that environmental health and safety is sufficiently important to the commonwealth that onsite septic services should remain affordable to all people and all regions.

The proposal did not garner consensus because there was concern among the private sector OSEs that it was worded too broadly and would be a way for the VDH to avoid shifting services as quickly and completely as possible to the private sector.

U. Availability and Competition: Private sector involvement in the onsite septic program should be increased where there is sufficient availability and competition.

This proposal was intended as a strategy to facilitate the shift to private sector services while also addressing concerns about regional differences in availability of private sector services. Some members felt that a mandated statewide shift would leave some regions underserved.

The proposal did not garner consensus because the private sector OSEs felt strongly that the shift should be accomplished statewide, and not piecemeal. They were not convinced that any region would suffer from insufficient private practitioners.

Additional Proposals from Stakeholders

Following the final in-person meeting of the committee, an informal subcommittee of OSEs collaborated over the phone and email on a number of additional proposals. After finding consensus among themselves on three of the issues, they asked that the remainder of the committee be polled online on whether they supported the following:

- V. VDH should continue internally evaluating the onsite sewage program to identify opportunities for future modifications that will encourage greater private sector participation in the design/evaluation of onsite systems.**
- W. VDH should continue the current policies and practices that encourage private sector participation. (One example of this is the production of alternative onsite system designs which currently fall under the responsibility of the private sector.)**
- X. When drafting future policies and regulations, VDH should specifically consider how those new rules are likely to impact private sector participation in the design/evaluation of onsite systems. To the greatest extent practical, it is recommended that those rules be drafted to encourage private sector participation.**

These proposals reflected an attempt to confirm broad committee support for the effort to shift services to the private sector as quickly and completely as possible.

These proposals did not garner consensus because some members argued that while they supported the spirit of the proposals or found them to be innocuous, they were too vague or should have been voted on in a committee meeting. Members commented that they would need more specific examples, goals, and timelines in order to support the proposals.

Fourteen members of the committee responded online. On all three proposals, 11 members voted “3” or “2,” supporting consensus, but three members voted “1,” leading to no consensus on the proposals.

CONCLUSION OF PROCESS

The SHIFT process concluded in early December 2013 after committee members were given a final opportunity to submit collaborative proposals for an online test for consensus. No additional proposals were submitted.

The SHIFT process provides a snapshot in time into Virginia's onsite septic system and the concerns and goals of its stakeholders. Through this process the stakeholders developed greater understanding of each other's concerns and interests, and it is expected – and encouraged – that they will continue to work with the VDH and each other to find ways to meet their mutual interests.

The VDH announced plans at the last SHIFT meeting to pursue three actions to address stakeholder concerns. First, to level the playing field and eliminate concerns about different standards for the private sector, the VDH plans to start the process of equalizing work product expectations. Second, to encourage people to use the private sector where possible, the VDH plans to develop a consistent policy for local health districts to disclose the limitations of their staff capacity and to encourage the use of the private sector. The details of both policies have yet to be worked out, and the VDH has said it welcomes ongoing stakeholder input. Third, VDH plans to submit this report to interested legislators for their consideration.

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APPENDIX A: MEMBERS OF THE SHIFT STAKEHOLDER ADVISORY COMMITTEE

| Stakeholder Interests | 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 interests | Dan Holmes | Piedmont Environmental Council |
| | Ed Dunn | Licensed OSE; Virginia Environmental Health Association |
| Homeowners/citizens | Larry Wallace | Virginia State Program Manager, Southeast Rural Community Assistance Project |
| | Bill Timmins | VDH Sewage Handling & Disposal Advisory Committee |
| Installers | Sandra Gentry | Manager, Gentry Septic Tank Service; Secretary, Virginia Onsite Wastewater Recycling Assoc. (VOWRA), VDH Sewage Handling and Disposal Appeals Review Board |
| Local government officials (planners, building officials, administrators) | Erik Johnston | Director of Government Affairs, 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 | Licensed OSE; President, VA Association of AOSEs |
| | Tony Bible | Licensed OSE |
| | Curtis Moore | Licensed OSE/VOWRA Representative |
| | Tim Reynolds | Reynolds-Clark Development, American Council of Engineering Companies (ACEC) |
| | John Powell | AOSSI/AOSSO; Powell's Plumbing/VOWRA |
| | John Ewing | Licensed OSE; AOSSI/AOSSO; Old Dominion Onsite, Inc. |
| | Joel Pinnix | Licensed OSE; President, Obsidian Inc. |
| | Jeff Walker | Licensed OSE; LPSS; President Elect, Virginia Assoc. of Professional Soil Scientists |
| | Bill Sledjeski | Licensed OSE; LPSS |
| VDH staff (field staff, EH managers, health directors, OEHS, deputy commissioners) | Vincent Day | Sewage Handling and Disposal Advisory Committee/Chairman, Virginia Assn. of American Geologists |
| | Jim Bowles | Licensed OSE; Environmental Health Coordinator, VDH Office of Environmental Health Services |
| | Charles Devine, M.D. | Health Director, Loudoun Health District |
| | Scott Honaker | Licensed OSE; Environmental Health Manager, Mt. Rogers Health District |
| Well Drillers | Jimmy Bundick | Bundick Well & Pump Co./VA Well Water Assoc. VP |

| | | |
|---|------------------------------------|--|
| Resource Members | Dwayne Roadcap | LPSS; Acting Division Director, Onsite Sewage and Water Services Division, VDH |
| | Allen Knapp | Director, Office of Environmental Health Services, VDH |
| | Mark Courtney | Senior Director for Regulatory and Public Affairs, Department of Professional and Occupational Regulation (DPOR) |
| | Larry Getzler | Chief Economic Analyst, Virginia Department of Planning and Budget (DPB) |
| UVa Institute for Environmental Negotiation (IEN) | Frank Dukes | Director, IEN |
| | Tanya Denckla Cobb | Associate Director, IEN |
| | Kelly Wilder | Senior Associate, IEN |
| | Jason Knickmeyer and Hannah Morgan | Graduate Students, IEN |

APPENDIX B: 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 be 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 VDH 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?

APPENDIX C: SHIFT STAKEHOLDER ADVISORY COMMITTEE MEETING AGENDAS

Meeting #1 Agenda

July 18, 2013 | 10 a.m. – 3:30 a.m.

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

| | |
|-------------------|--|
| 10 a.m. | <p>Welcome/Introductions</p> <ul style="list-style-type: none"> Welcome and introduction to SHIFT charge <i>Allen Knapp, Director, Office of Environmental Services, VDH</i> Introductions (name, organization(s) representing, hope for this process) <i>Frank Dukes, Director, UVa IEN</i> <i>Tanya Denckla Cobb, Associate Director, UVa IEN</i> <i>Kelly Wilder, Senior Associate, UVa IEN</i> Overview of the process |
| 10:45 a.m. | <p>Committee Protocols</p> <ul style="list-style-type: none"> Roles (IEN, VDH, committee members, technical advisors, observers) Responsibilities of committee members Establishing guidelines for discussion Explanation of consensus |
| 11:15 a.m. | <p>Onsite Septic 101 – Part A</p> <ul style="list-style-type: none"> History and overview of the issue <i>Dwayne Roadcap, Acting Division Director, Onsite Sewage and Water Services</i> Questions and discussion |
| 12:15 p.m. | Lunch (box lunch provided for committee members) |
| 12:45 p.m. | <p>Findings of Key Stakeholder Concerns</p> <ul style="list-style-type: none"> Report on interviews, stakeholder concerns, key issues Questions and discussion |
| 1:30 p.m. | <p>Key Issues for SHIFT Discussion</p> <ul style="list-style-type: none"> 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. | <p>Next Steps</p> <ul style="list-style-type: none"> Proposed agenda and location for next meeting Information needs Other |
| 3:30 p.m. | Adjourn |

Meeting #2 Agenda**August 8, 2013 | 10 a.m. – 3:30 p.m.****The Upper Covenant School, 175 Hickory Street, Charlottesville, VA 22902**

| | |
|-------------------|--|
| 10 a.m. | Welcome Back & Introductions <ul style="list-style-type: none">• Introductions• Recap of process (roles, consensus, process)• Recap of meeting 1 outcomes (changes to meeting summary?)• Developments since Meeting 1• Agenda for the day |
| 10:30 a.m. | Reviewing Information Requested <ul style="list-style-type: none">• Presentation by VDH of information gathered• Q&A/discussion |
| 11:15 a.m. | Building Understanding of SHIFT Goals |
| 11:40 a.m. | Quick Break |
| 11:50 a.m. | Brainstorming Ideal System <ul style="list-style-type: none">• What is needed to create a system that meets all evaluation criteria? |
| 12:30 p.m. | Lunch (box lunch provided for committee members) |
| 1 p.m. | Continue to Develop Ideas to Build Ideal System |
| 2:15 p.m. | Quick Break |
| 2:25 p.m. | Identifying Areas of Agreement |
| 3:05 p.m. | Public Comment <ul style="list-style-type: none">• Please sign up ahead of time |
| 3:20 p.m. | Next Steps <ul style="list-style-type: none">• Next meeting agenda/where we're headed• Next steps for committee members• Quick meeting evaluation |
| 3:30 p.m. | Adjourn |

Meeting #3 Agenda**August 29, 2013 | 10:15 a.m. – 3:45 p.m.****Northside Library, 300 Albemarle Square, Charlottesville, VA 22901**

- 10:15 a.m. Welcome Back & Introductions**
- Introductions
 - Review process
 - Meeting #2 recap
 - VDH update
 - Today's agenda
- 10:30 a.m. Developing Specific Recommendations**
Carousel I
Round 1
- a) Access & Affordability
 - b) Orderly Transition
 - c) Fee Structure/Funding & Transition
- 11:40 a.m. Quick Break**
- 11:50 a.m. Developing Specific Recommendations**
Carousel I (continued)
Rounds 2 and 3
- 12:30 p.m. Lunch (box lunch provided for committee members)**
- 1 p.m. Developing Specific Recommendations (continued)**
Carousel II
Rounds 1 – 3
- d) Quality Assurance/Education/Professionalism
 - e) Checks & Balances
 - f) Economic Impacts
- 2:30 p.m. Break**
- 2:45 p.m. Discussion Wrap-up**
- Potential areas of agreement
- 3:15 p.m. Public Comment (if sign-ups)**
- 3:30 p.m. Meeting Wrap-up**
- Additional information requests
 - +/- meeting evaluation
 - Next steps in the consensus process for developing recommendations
- 3:45 p.m. Adjourn**

Meeting #4 Agenda

September 26th, 2013 | 10 a.m. – 3:30 p.m.
English Inn, 2000 Morton Drive, Charlottesville, VA 22903

10 a.m. Welcome Back & Introductions

- Introductions
- Review process and meeting #3 recap
- IEN update on comments and input
- VDH discussions on backlog data and SHIFT mandate
- Today's agenda

10:30 a.m. Roles & Responsibilities Discussion

- Whole group discussion on draft roles & responsibilities recommendations

Process Questions

1. Clarification: Are there questions about what specific recommendations mean?
2. Strengthening: How can we strengthen specific recommendations to enable broader support? What concepts are important to include?
3. Relevance/importance: Are there recommendations that are not significant enough to include here?
4. Narrowing: Are there ideas that simply cannot work, or present too many challenges to be supported here?

11:30 a.m. Quick Break

11:35 a.m. Continue Discussion

- Continue discussion on draft Roles & Responsibilities recommendations
- Begin discussion of draft Transition Process recommendations

12:30 p.m. Lunch (provided for committee and resource members)

1 p.m. Continue Discussion

- Begin or continue discussion of draft Transition Process recommendations
- Begin discussion of draft Financial & Economic recommendations

2:40 p.m. Break

2:45 p.m. Discussion Wrap-up

- Review areas of agreement
- Discuss plan for meeting #5

3:15 p.m. Public Comment (if sign-ups)

3:20 p.m. Meeting Wrap-up

- +/- meeting evaluation
- Next steps in the consensus process for developing recommendations

3:30 p.m. Adjourn

Meeting #5 Agenda**Thursday, October 31st, 2013 | 10 a.m. – 2 p.m.****Virginia Department of Forestry, 900 Natural Resources Drive, Charlottesville, VA 22903****10:00 Welcome Back & Introductions**

- Introductions
- Review process, meeting #4 recap, meeting #4 summary
- Other updates – comments, etc.
- Request to review and update contact list
- Today's agenda
 - “Floating breaks” – no scheduled breaks other than lunch

10:15 Building Consensus on Proposals with Greatest Support

- Review compiled online tests for consensus
- Where is there greatest support?
- Identify the top proposals with the greatest support
- Discussion on bridging critical differences: Allot 10 minutes each, per proposal:
 - **Rapid needs assessment** (people who couldn't support are given 20-30 seconds each to explain what could be changed or added to the proposal to enable them to support the proposal)
 - Others on the committee discuss ways to address/meet those concerns and needs (20-30 seconds each)
 - If appropriate, test for consensus on revised proposal & record numbers
 - If needed, identify one or two people who will work on a proposal to provide to facilitators

11:20 Building Consensus on Other Key Issues

- Opportunity to identify and discuss a few other key issues, to explore bridging differences and building consensus

12:00 Working Lunch**12:20 Continue Building Consensus Package**

- Identify next proposals for discussion

1:45 Public Comment (if sign-ups)**1:50 Meeting Wrap-up**

- +/- meeting evaluation
- Next steps in the consensus process: moving toward a final report of recommendations

2:00 Adjourn

APPENDIX D: SHIFT STAKEHOLDER ADVISORY COMMITTEE MEETING SUMMARIES

VDH SHIFT Stakeholder Advisory Committee Meeting

July 18, 2013, 10 a.m. – 3:30 p.m.

The Upper Covenant School, Charlottesville, Virginia

Meeting #1 Summary

Facilitated by the Institute for Environmental Negotiation

Executive Summary

The SHIFT Stakeholder Advisory Committee has been tasked by the Virginia Department of Health with producing a report of recommendations to advise the agency on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment. The committee met for the first time in July of 2013 to be introduced to a process facilitated by the University of Virginia Institute for Environmental Negotiation. During the first meeting, participants came up with a list of key issues they will address through the process and discussed evaluation criteria. The committee will meet again in early August to expand on their list of key issues, finalize evaluation criteria, and begin to generate options. The next SHIFT Stakeholder Advisory Committee will take place Thursday, August 8th at 10:30 a.m. at The Covenant School (Upper School) in Charlottesville.

Welcome/ Introductions

Forty-five people met at the Upper Covenant School in Charlottesville, Virginia on July 18, 2013 for a VDH Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee meeting. Frank Dukes, Tanya Denckla Cobb, and Kelly Wilder from the Institute for Environmental Negotiation (IEN) at the University of Virginia facilitated the meeting. This meeting was the first in a series intended to lead to consensus recommendations from the committee concerning the future of the onsite septic program in Virginia, with the hopes of maximizing private sector involvement in the new program to the greatest extent possible.

The facilitators welcomed participants to the meeting and introduced Allen Knapp, Director of the VDH Office of Environmental Health Services, to give an overview of the SHIFT process. Mr. Knapp began by outlining five key areas he hopes will be discussed through the SHIFT meeting process:

1. Tactics and strategies for the transition.

2. Regional differences and barriers that could affect change.
3. Options that appear to be promising but that might require additional study.
4. Recommendations for the process.
5. Anything that might require statutory changes.

He then explained the rationale for initiating the SHIFT process and offered a brief historical perspective on the issue. Recently, a group of people involved with the onsite septic program met with Delegate Michael Watson and proposed that the Virginia Department of Health should stop providing direct services to the extent possible. Mr. Knapp was present and stated that the Department of Health does not disagree with this desired initiative but believes the right question to ask is the following: How can we maximize private sector involvement (direct services) to the greatest extent possible?

Mr. Knapp explained that the group needs to decide on what is meant by “to the greatest extent possible.” It is also necessary to consider why the marketplace hasn’t worked to cause the shift already, what the market forces are, and whether or not the VDH should be performing these direct services as well. He believes that this is not a simple problem, nor a problem that the VDH can simply fix unilaterally. Additionally, this process needs to result in a solid and creative plan to transition into a new septic program, rather than just selecting winners and losers.

Mr. Knapp then thanked the meeting participants for taking their time to engage in this process, the IEN team for accepting the VDH SHIFT job on short notice, and Health Department staff for attending the meeting in a resource capacity. He turned it over to Frank Dukes and Tanya Denckla Cobb, Director and Associate Director of the Institute for Environmental Negotiation.

Frank introduced himself and the Institute for Environmental Negotiation. He briefly described the involvement of IEN and its responsibilities. IEN is contractually responsible to VDH, which hired the group to organize the initiative and facilitate the process. However, Frank emphasized that the true responsibility of IEN is to the people involved in the process and to the process itself. IEN will, first and foremost, work to provide members of the SHIFT Stakeholder Advisory Committee with what they need to drive the initiative and to ensure that the process operates fairly and smoothly.

Frank continued by explaining that IEN will produce a report at the end of the process that will reflect the ideas and preferences of the committee members and be vetted by the group. Using consensus means that each individual must support any recommendations that will be made or they will not be included in the report. Unlike in voting groups, this also means that the members not only seek to meet their own needs, but that they strive to listen to, understand, and meet the needs of all others. For any remaining areas of disagreement, the report will describe them so that all members agree that the report is fully accurate.

Tanya also introduced herself and explained her involvement in the onsite septic process that took place in 2000, which led to the initiation of the privatization of the onsite septic program

in Virginia. She then asked that group members introduce and share with the group their main goals for the process.

Members shared their names and main goals for being involved in the SHIFT process. A list of the meeting participants can be found at the end of this summary, and their expressed goals are listed below:

- Consensus agreement
- Improved understanding between VDH and soil scientists
- No detrimental outcomes
- Improved professionalism
- Assurances of proper oversight
- Maintenance of regulations
- Focus kept on core issues
- Conflict of interest resolved
- Standardization of process and design
- Assurance that customers receive services
- Efficient service at lowest cost to customer that protects the public health
- Maintenance of public health, oversight, and good utilization of current resources
- Creation of a roadmap that's achievable and valid
- Access by citizens to safe and effective systems
- Protection of public health and safety
- Avoidance of creating more problems than are solved
- Protection of process while also protecting safety and health
- Future needs of manufactured products are met

Review of Committee Protocols

After the introductions, Tanya mentioned that a few of the people invited to participate on the Stakeholder Advisory Committee were not able to make it to the meeting but hope be joining the group for later meetings.

She then explained how the group will operate and what it will do. She explained that much of this meeting would involve setting the stage for the process so that the meeting participants can efficiently proceed forward. She then presented the meeting agenda, which is as follows:

- Welcome/Introductions
- Review of Committee Protocols
- Onsite Septic 101 Presentation
- Review of Findings of Key Stakeholder Concerns
- Identification of Key Issues for SHIFT Discussion
- Discussion about Moving Forward on Issues and Decision Criteria
- Establishing Next Steps

The group went over the process overview (included in the agenda packet), which summarizes the meeting objectives for the coming months. The overview divides the seven scheduled meetings into three phases, each with its own objectives:

- Phase 1 (Meetings 1, 2, and 3) – Learn and share about concerns and issues; identify and agree on core responsibilities for VDH and core functions for private sector.
- Phase 2 (Meetings 4 and 5) – Explore options and develop recommendations for fiscal issues and regional differences, transition plan, and other issues.
- Phase 3 (Meetings 6 and 7) – Refine and agree on recommendations; draft and polish final report.

After reviewing the process overview, Tanya asked if group members had any ideas or concerns about the current plan. Ideas and concerns expressed are listed below:

- Concern that there are too many meetings planned.
- Idea that the group should be using more electronic resources so people can communicate and share ideas easily while not at meetings.
- Idea that the group needs to figure out how to work in subgroups. (Concern was raised about subgroups, because it is difficult for the group as a whole to keep up with everything if there are too many subgroups. If subgroups were formed, there would need to be a solid system of communication in place for subgroups to share ideas.)
- Idea that it's important to maintain an accurate record of what's going on, including who offered what ideas, and to ensure an environment during meetings where people feel that they can talk freely.

The facilitators acknowledged these suggestions and agreed to work to implement them to the extent possible, including bringing the process to an end as quickly as may be done without harming the viability of the outcomes. They invited group members to help them by calling attention to where they fall short and where the process could be improved.

Frank and Tanya then reviewed the group's roles and responsibilities.

Roles:

- People who are not sitting at the table are here to observe and provide support, but they will not be involved in the decision making process.
- The people at the table are responsible for representing their constituencies well and for sharing with the group and contributing what is necessary.
- The IEN role is to ensure that the process is run smoothly and well.

Responsibilities:

- Everybody at the meeting was selected to represent certain interests. Members were chosen to ensure that as many interests as possible were covered. People involved, therefore, need to ensure that they represent the full range of their interests, come willing to learn from each other, work towards a common goal, help with the process so that the group succeeds, ask for information that they need and want, contribute to the formation of the criteria for success, participate actively, and participate in any subgroups that are formed.
- It is very important that members take back what they learn through the process to their groups or constituencies. Keep them up-to-date and bring their concerns back to the table.
- VDH has the ultimate responsibility for what is implemented after this process. There will be a good faith effort to act on the recommendations of the committee because VDH wants to see the process move forward, but the final responsibility lies with them.

After reviewing roles and responsibilities, Frank asked the group if there were any requests and guidelines about how the group should move forward. The requests and guidelines suggested are as follows:

- Meetings are run efficiently and participants respect each other's time.
- People exhibit proper electronics etiquette during meetings.
- Meeting summaries are thorough and sent out quickly.
- Participants who share meeting and process information with outside parties, including the news media, are respectful in how they convey information and refrain from speaking for other participants.

Tanya then went over the meaning of consensus, established guidelines for discussion and for raising concern, and welcomed other ideas and concerns. She remarked that it's important not to think that you know what a person is going to say, and to instead keep your minds and ears open.

Tanya also explained that a meeting participant can at any time request a test for consensus to see where people stand on an issue. Group members will be asked to raise their fingers depending on their level of agreement. Three fingers means completely on board, two fingers means you can live with it but there remain minor questions or concerns, and one finger means you can't live with the current idea. If there is anybody with one finger, there is no consensus. It is important to note that this system is not like taking a vote, because if one person doesn't agree, the group can't move forward and there needs to be more conversation to understand what is preventing those members from supporting a particular idea or option.

Operating by consensus can appear to slow the process. However, it is more likely that the plans and ideas developed in the process will be implemented if there is full consensus, which incentivizes working together towards a common goal.

Onsite Septic 101 Presentation

The meeting transitioned into an Onsite Septic 101 presentation, which was prepared and presented by Dwayne Roadcap, Acting Division Director of Onsite Sewage and Water Services at VDH. The presentation, summary notes, and a record of the Q&A can be found in an appendix to this meeting summary.

Review of Findings of Key Stakeholder Concerns

With the conclusion of Dwayne's presentation, Kelly Wilder, IEN Senior Associate and meeting facilitator, presented the Preliminary Scan of Stakeholder Concerns and Issues, a summary document assembled based on feedback from interviews with stakeholder advisory committee members conducted prior to the first meeting. The group was given five minutes to read over the handout and consider three questions: 1) Does anything need clarification? 2) Is anything inaccurate? 3) Is anything significant missing?

Kelly then asked for feedback about the handout. The following ideas/concerns/questions were shared:

- The question about liability for VDH systems after SHIFT has already been answered: the responsibility lies in the property owner and whoever touched it last.
- Some of the comments are a little "finger-pointing" in nature.
- If the shift does take place and the VDH is strictly regulatory, complaints about malfunctions will reach the VDH. Will VDH take care of all of the resulting investigations? If it is privatized, whose responsibility do all the systems that are in the field become?
 - Why is it not the responsibility of the house owners?
- Will the SHIFT happen universally? That's a definite concern. Will all areas of the state do the same thing?
 - This is a question about how local ordinances affect state regulations.
 - The many aspects involved in local regulation can be quite complicated, and it's not generally within the state's realm to adjudicate about local ordinances.
- It's truly important that licensed people continue to do work and that the VDH maintains a highly trained staff, which is hard to do when the VDH has such a high turnover of staff. An OSE should be able to seek employment in either the public or private sector and be comfortable and proficient in either of those roles.

Identification of Key Issues for SHIFT Discussion

After reviewing the stakeholder concern findings, Tanya and Frank facilitated discussion about developing criteria for success by first assembling a list of the key issues to be addressed during SHIFT meeting discussions. Each meeting participant was asked to provide one key issue that absolutely must be addressed by the end of the SHIFT meetings, and additional issues were elicited after an initial round of input. These issues were as follows.

Financial feasibility:

- Affordability and equity
- Affordable septic is a public benefit that accrues to future homeowners and to making housing affordable, therefore some public subsidy can be justified
- Long term funding (VDH) for program
- Means-tested services (sliding scale in code) or way to ensure services in lower-income communities
- How to address those lacking funds

Clear roles and responsibilities:

- Clarify private and public sector roles (regulation versus design)
- Standardization of design role
 - Concern that one size doesn't fit all – need flexibility based on geographic and economic conditions and access to services
 - Consistency in the quality of services across the state – need consistent standard that people must strive for
- Conflict of interest (VDH provides services and regulates industry)
- Clarity and disclosure to consumer (complete transparency)
- Total privatization of soil evaluation and system design with reporting to public agency
- Communication and data sharing between VDH and private sector
- Maintain VDH capacity/support for low-income work
- Job for legislature
- Privies

Effective implementation:

- Private sector has ability to say no/turn down work – what about after shift?
- Need for cooperative relationships between all key player
- Where will VDH funding come from during transition? In future?
- Education for homeowners, etc. – what is septic/the septic program, what is homeowner's responsibility, what is the cost of maintenance for subsequent buyers?
- Ongoing communication between VDH and industry
- When and how can this best happen?
- Need support for continual professional development (UPI?)

Maintaining and repairing systems:

- Will VDH staff continue to do repairs?
 - Concern: cost to homeowner
- At what point is it only the homeowner's responsibility?
 - Whoever last “touched” the system is responsible
- Balancing new construction work with repairs/failures and assuring that there is sufficient capacity to manage both
- Issue is not “blame,” but moving forward together to protect public health

Maintaining VDH staff, capacity and budget:

- Retention of staff who are qualified OSEs
- Accountability and record keeping
- Tracking system
- VDH staff need training and competence for oversight

Adequate regulation and oversight:

- Issues of consistency for jurisdictions’ quality and protection standards
- Flexibility for differing economic and soil conditions, access to services
- Preserving public confidence and appropriate oversight
- System of checks and balances for final inspection
- Responsibility to report unlicensed workers
 - How can this be done? Need for a mechanism to do so
- Oversight needs to stay with VDH

Discussion about Moving Forward on Issues and Decision Criteria

Frank then explained the need for developing a set of criteria that, if achieved satisfactorily, could be used to determine the success of the process. He facilitated discussion about moving forward on issues and decision criteria.

The following draft criteria for success were established by the meeting participants:

- Proper oversight – appropriate environmental health and trust in the system.
- Understanding of the ethical responsibility to ensure Virginians that private AOSEs are reliable and trustworthy.
- Access to services for all.
- Sufficient funding for whatever new program is developed.
- Transparency of each role, the transparency of the regulator and the transparency of what is expected.
- Clear roles.
- Enthusiastic support of private and public sector.
- A public that is educated about the system.

Establishing Next Steps

Before ending the meeting, the group needed to decide on what information was needed in order to continue making informed decisions, decide whether or not there needs to be any additional people included in the Stakeholder Advisory Committee, and provide feedback about the meeting space and organization so that the IEN could accommodate any requests in the future.

The committee members expressed that, if possible, they would like access to the following information:

- Data behind VDH permit app percentages
- 2012 VDH permit data
- Data for repair permit trends
- All Research and Documentation #32 data to SHIFT
- # of VDH OSEs
- Percentage VDH income from permits
- Information from other states
- Impact (economic and staff) on VDH
- Geographic impacts
- Drivers for uses of VDH v. Private
- QA/QC data for entire state
- Pressures for/against Level 1 + 2 reviews
- Cooperative agreement to locality (outside Fairfax and see Fairfax)
- Add installer to group (not from Richmond), add rural county

The committee members expressed that they think the following people/interests should be added to the group:

- Another installer from a different area than where Sandra Gentry works (which is in Richmond)
- Beau Blevins, or another representative from VACo, should be at the meetings
- Joel Pinnix, or another soil engineer, should be at the meeting

The meeting participants shared the following feedback about the meeting space and organization:

- Concern with the distractingly noisy air conditioner in the meeting space.
- Would be good to investigate the potential for working lunch.
- Need for better chairs.
- Appreciative of the coffee provided throughout the day.
- Members expressed appreciation for how the meeting was facilitated.

Stakeholder Advisory Committee Participants:

Charles Devine – Health Director for Lord Fairfax Health District
 Bill Sledjeski – CPSS and an AOSE
 Jeff Walker – President Elect of VAPSS
 Dan Holmes – Piedmont Environmental Council
 Bill Timmins – VDH Sewage Handling & Disposal Appeals Review Board
 Christina Royall – Executive Director, VA Well Water Association
 Jeff Gore – Legislative Liaison for Loudoun County
 Jim Slusser – President of the VA Association of AOsEs, practicing AOSE
 Tony Bible – Virginia AOSE
 Tyler Craddock – VA Manufactured and Modular Housing Association
 Mike Toalson – Chief Executive Officer of the Home Builders Association of Virginia
 Scott Honaker – Environmental Health Manager of the Mt. Rogers Health District
 Curtis Moore – VOWRA Representative, practicing AOSE
 Ed Dunn – Virginia Environmental Health Association
 Larry Wallace – Virginia State Program Manager of SERCAP
 Jim Bowles – VDH Office of Environmental Health Services
 Sandra Gentry – Manager of Gentry Septic Tank Service, Secretary of VOWRA
 Dave Lentz – Regulatory Director at Infiltrator Systems Inc.
 Neil Williamson – Governmental Affairs Director at Charlottesville Area Assoc. of Realtors

Meeting Resource Members:

Allen Knapp – VDH
 Dwayne Roadcap – VDH
 Mark Courtney – DPOR
 Larry Getzler – DPB

IEN Facilitation Team:

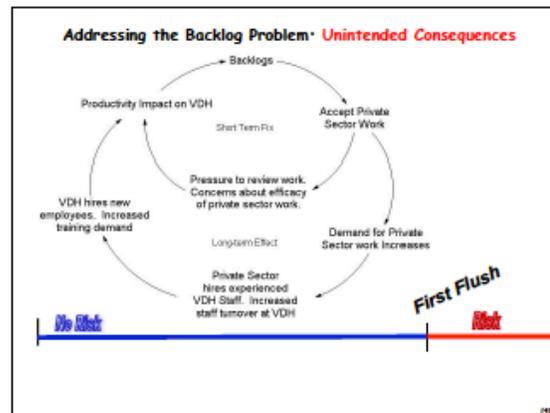
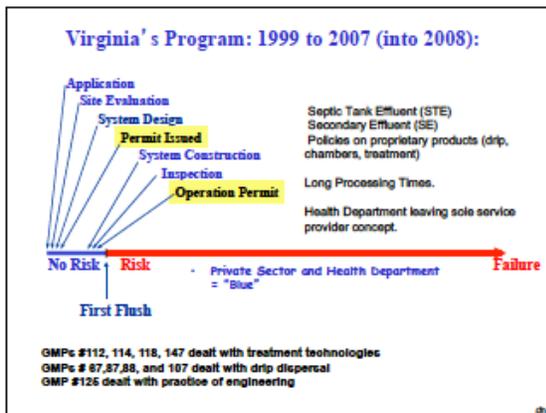
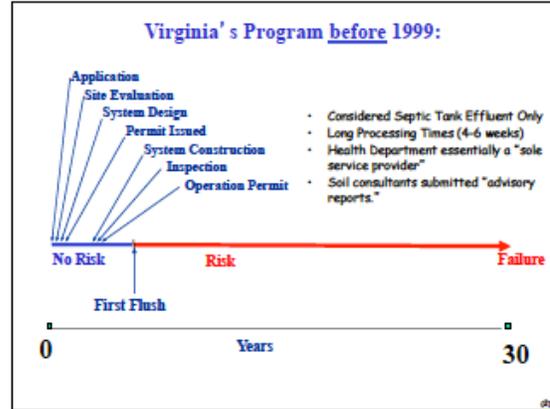
Tanya Denckla Cobb
 Frank Dukes
 Kelly Wilder
 Jason Knickmeyer

Meeting Observers:

| | |
|----------------|------------------|
| Tim Wood | Danna Revis |
| John Ewing | Candy McGarry |
| Sarah Lewis | Lance Gregory |
| Steve Simpson | David Tiller |
| Bob Marshal | Carry Atwood |
| Alan Brewer | Marcia Degen |
| Jack McQuellen | Ololade Olakanmi |
| Mike Crown | Tim Wood |
| Shaun Wiggin | Lenore Dukes |

Meeting #1 Summary Appendix – Onsite Septic 101

VDH Presentation



AOSE Regulations: 2002 - 2009*

- Emergency Regulations expired in 2001
- Final Regulations took effect July 1, 2002
 - Deemed Approval
 - Minimum paperwork requirements
 - Minimum 10% Level 1 and Level 2 review
 - Conflicts about work efficacy
 - Conflicts about "nit-pickiness"

Business Model Review: 2005 - 2006

- History of Events:
 - July 2003
 - The Council on Virginia's Future created (HB 2097)
 - November - December 2004
 - Governor's office approached various agencies
 - VDH suggested the onsite sewage program and Governor's office agreed.
 - January 2005
 - VDH made proposal and onsite program selected

Business Model Review: 2005 - 2006

- Final Report
 - Shift direct services to private sector in orderly fashion and to the extent possible
 - » Indigent and low income
 - Change fees to more closely mirror charges by private sector
 - Shift AOSE program to DPOR
 - Did not explain how to reach the goal

03

Important Legislation: 2007

- HB 3134
 - AOSE to COSE and AOSE
 - Onsite soil evaluators moved to Professional and Occupational Regulation
 - VDH AOSE Regulations are being rescinded
 - Required operation and maintenance for alternative onsite sewage systems
 - Web based reporting system
 - \$1.00 fee

04

Important Legislation: 2008

- HB 1166
 - developed from a 2007 bill (HB 1950) referred to the Housing Commission.
 - addressed concerns from the engineering community that the Board's regulations did not easily allow deviations from prescriptive site, design, and construction criteria
 - GMP #146 developed
- HB 2691, "Schedule of Civil Penalties"
 - Presently under executive review

05

Important Legislation: 2009

- HB 2551 and SB 1468
 - Emergency regulations to establish performance requirements for AOSS
 - Included designs under Va. Code § 32.1-163.6
 - Included O&M requirements from HB 3134
 - Emergency AOSS Regulations (2010 - 2011)
 - Final AOSS Regulations effective 12/7/2011

06

Important Legislation: 2011

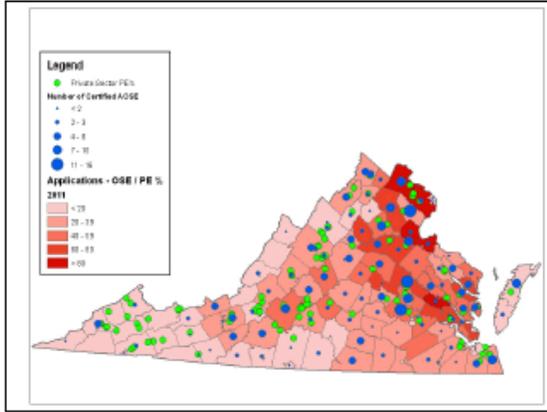
- HB 2185
 - Every application include OSE/PE Report
 - Left in committee pending a study
 - Stakeholder interview process completed
 - Report accepted by General Assembly
 - » 10 meetings around the Commonwealth from September 9, 2011 through October 6, 2011.
 - » Online survey and telephone interviews.
 - » Heard from over 300 stakeholders.

07

HB 2185 Study:

- "There is not a one-size fits all solution."
 - Different regions with different characteristics
 - number of private sector available
 - volume of work available,
 - types of applications received,
 - wishes of local government
 - median income of citizens. Regional solutions should be explored.
- "Small and rural communities generally lack a competitive free market place."
 - Fees
 - Number of private sector service providers available in certain areas
 - Willingness of private sector to provide certain services

08



Opportunities

- Relying more on the private sector for primary services will ---
 - allow VDH to focus on core functions that protect public health and groundwater supplies.
- new and emerging responsibilities
 - O&M program for AOSs
 - Enhanced data management and related program management
 - Surveillance, enforcement, technical assistance
 - Education and community outreach
 - New responsibilities related to the Chesapeake Bay TMDL.

In the meantime:

- VDH has dual role of "regulator" and "service provider."
 - Doing the same work of the stakeholders you regulate presents unique challenges
 - Concerns about double standard
 - Concerns about motivations and unfair reviews
 - Concerns about QA/QC of internal staff



Health Department Funding: Key Concepts

- There are five optional forms of county government provided by Title 15.2:
 - the county board form,
 - the county executive form,
 - the county manager form,
 - the county manager plan, and
 - the urban county executive form.

Option for Urban County Executive Form

- Chapter 678 of 1994 Acts of Assembly
 - Approved April 10, 1994 (SB 42)
- *Be it enacted by the General Assembly of Virginia: That certain counties be authorized to operate local health departments under contract with the State Board of Health.*
 - Notwithstanding any other provision of law to the contrary, the governing body of any county having the urban county executive form of government may enter into a contract with the State Board of Health to provide local health services in that county.
 - The local governing body shall operate the local health department.
 - State funds for the operation of health services and facilities shall continue to be allocated to any county which has elected to provide health services by contract as if such services were provided in a county without such a contract.

Health Department Funding: Key Concepts

- § 15.2-80L. Adoption of urban county executive form.
- Any county with a population of more than 90,000 may adopt the urban county executive form of government in accordance with the provisions of Chapter 3 (§ 15.2 -300) of this title.

(PH)

Health Department Funding: Key Concepts

- § 32.1-32. Independent local health departments.
 - A. The governing body of any county or city which does not enter into a contract with the Board for the operation of the local health department shall appoint the local health director and may appoint a local board of health to establish policies and to advise the local health department.
 - B. Each local health director and local board of health appointed by a governing body shall enforce all health laws of this Commonwealth and regulations of the State Board of Health.
- (1979, c. 711.)

(PH)

Fairfax County is Different

- Chapter 678 of the 1994 Acts of Assembly.
 - An urban county with an executive form of government can provide local health services.
 - All employees are county employees (not state).
 - Exempt from certain requirements : Va. Code 32.1-163.6

(PH)

Va. Code 32.1-163.5

- Shall accept private site evaluations and designs
- Not required to perform a field check
- Deemed approved if not acted upon in certain time frames
- Nothing shall authorize anyone other than a PE to engage in the practice of engineering.

(PH)

Health Department Funding: Key Concepts

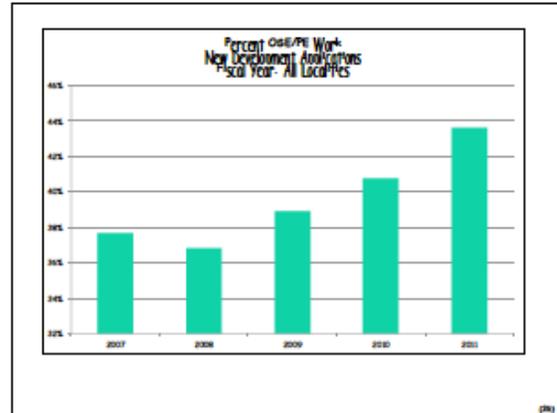
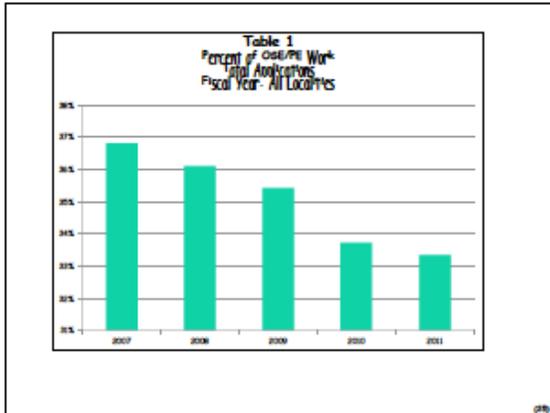
- 119 Counties and 35 Health Districts
 - Cooperative agreements
- Health Departments provide services in the following areas:
 - Communicable disease control,
 - Child and maternal health, WIC
 - Emergency Preparedness
 - Family planning,
 - Oversight of hospitals, nursing homes, and adult homes,
 - Dental services and other clinics (STDs)
- **Environmental Health**
 - Restaurants, food outbreaks
 - Drinking water, springs, wells, cisterns
 - Sewage systems, community systems, AOSS, COSS, failures, voluntary upgrades, operation and maintenance, Chesapeake Bay TMDL,
 - Campgrounds, pools, hotels,
 - Milk plants
 - Marina inspections
 - Rabies investigations and animal confinements

(PH)

Fiscal Year 2011 (July 01, 2010 through June 30, 2011)

| | # Application | # Approved | # Admin. Denied | # Site Denied | Condition # | # Being Processed | # Other | # AOSE App. | # AOSE Admin. Denied | # AOSE Site Denied | # PE Sign. |
|--|---------------|------------|-----------------|---------------|-------------|-------------------|---------|-------------|----------------------|--------------------|------------|
| Component Replacement Permit | 305 | 288 | 6 | 3 | 6 | 12 | 12 | 13 | 4 | 0 | 3 |
| Construction Permit | 6955 | 5421 | 365 | 239 | 319 | 296 | 113 | 3903 | 85 | 34 | 907 |
| Courtesy Sign | 121 | 1 | 0 | 0 | 0 | 120 | 0 | 83 | 0 | 0 | 1 |
| Expansion Permit | 343 | 194 | 15 | 11 | 33 | 15 | 8 | 70 | 3 | 0 | 28 |
| Highly Documentation Modification Permit | 218 | 200 | 2 | 1 | 1 | 2 | 0 | 1 | 0 | 0 | 3 |
| MSE-Lot Certification Letter | 234 | 217 | 8 | 4 | 48 | 36 | 8 | 55 | 3 | 0 | 23 |
| Health Permit | 27 | 12 | 0 | 2 | 0 | 13 | 0 | 15 | 0 | 2 | 1 |
| Safe, adequate and proper evaluation | 2867 | 2130 | 194 | 123 | 54 | 258 | 112 | 203 | 17 | 9 | 147 |
| Sewage Disposal | 1824 | 1084 | 48 | 109 | 9 | 148 | 28 | 3 | 0 | 0 | 4 |
| Single Lot Certification Letter | 90 | 34 | 7 | 0 | 1 | 20 | 2 | 5 | 1 | 0 | 32 |
| Subdivision | 1118 | 791 | 121 | 41 | 0 | 117 | 38 | 830 | 27 | 9 | 19 |
| Totals | 14772 | 10734 | 750 | 838 | 471 | 1058 | 218 | 4894 | 144 | 87 | 1171 |

(PH)



Cooperative Agreements

- Cooperative Agreements cover both mandated and non-mandated health services:
 - The Code of Virginia requires Health to fund at least 65 percent of the mandated services.
 - A locality can opt to provide services unique to its jurisdiction; local governments must fund 100 percent of any of these unique local services.
- Three primary funding sources support the onsite sewage and water supply program: the general fund, local matching funds, and permitting fees.
- VDH does not charge for many of its services but customers pay to process two types of applications:
 - onsite sewage system and private water supply.

No Revenue Activities

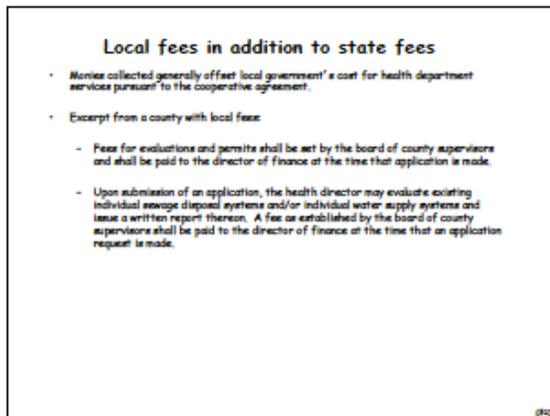
- Customers continue to receive non-fee services from VDH, including the following:
 - Repair wells
 - Repair onsite sewage systems
 - Voluntary upgrades
 - Complaints, rodent investigations, animal confinements
 - Courtesy Reviews
 - Construction inspections and follow-up inspections
 - Preliminary engineering reviews
 - Subdivision reviews

Non-General Fund Revenues

- Prior to 2002, VDH charged \$75 to process onsite sewage applications and \$40 to process water supply applications.
- From 2002 through 2007, VDH charged \$112.50 and \$77.50 respectively for these services.
- During the 2008 Virginia General Assembly session, VDH was prompted to examine its costs for processing the two types of applications.
- VDH calculated its costs and suggested new fees to reflect its costs.
 - Fees not wholly based on the cost to deliver the actual service
 - Filling in lost general fund revenue
 - New fees established in the budget bill

State Fees

| Service | Fee |
|---|------------|
| Construction permit with no supporting PE/O&E work ("Bare application") | |
| System ≤ 1,000 GPD | \$425.00 |
| System > 1,000 GPD | \$1,400.00 |
| Construction permit with supporting PE/O&E work included | |
| System ≤ 1,000 GPD | \$725.00 |
| System > 1,000 GPD | \$1,400.00 |
| Certification letter with no supporting PE/O&E work ("Bare application") | |
| System ≤ 1,000 GPD | \$350.00 |
| System > 1,000 GPD | \$1,400.00 |
| Certification letter with supporting PE/O&E work included | |
| System ≤ 1,000 GPD | \$320.00 |
| System > 1,000 GPD | \$1,400.00 |
| Private well | \$300.00 |



VDH Presentation Notes and Q&A

- Virginia's Program before 1999
 - Pre-flush
 - Application → site evaluation → system design → permit issued → system constructed → inspection → operation permit → first flush
 - Considered septic tank effluent only
 - Long processing times (6-8 weeks)
 - Health Department essentially a "sole service provider"
 - Soil consultants submitted "advisory reports"
 - Post-flush
 - This is where the risk to public health begins
- Virginia's Program: 1999 to 2007
 - Changes to the program so that people that were doing advisory reports would get some sort of certification so that there could be more reliance on their work
 - Deemed approval
 - This came into play when the VDH couldn't do a project, either for a timing reason or for another reason
 - If the VDH doesn't agree to a project within a certain time, it was considered Deemed Approved
 - This meant that at the application stage, the site evaluation and the system design could be handled by a private sector worker with VDH oversight – VDH still had to agree to issue permits
 - Health department at this point started to lose the position of being the only service provider and the only decision maker.
- Addressing the Backlog Problem: Unintended Consequences
 - There was a great deal of backlog, which led to an increased use of private sector work to remedy the backlog issue
 - There was an increase in demand for private sector work because they could do work quickly as a result of this backlog shift

- A lot of the private sector, with this new demand, began hiring VDH staff away, which led to large turnover rates of staff within the VDH
- AOSE Regulations: 2002-2009
 - Emergency Regulations expired in 2001
 - Final Regulations took effect on July 1, 2002
 - Deemed Approval
 - Minimum paperwork requirements
 - Minimum 10 % Level 1 and Level 2 review
 - Conflicts about work efficacy
 - Conflicts about “nit-pickiness”
- Business Model Review: 2005 – 2006
 - History of Events
 - July 2003
 - The Council On Virginia’s Future Created HB2097
 - November – December 2004
 - Governor’s office approached various agencies
 - VDH suggested the onsite sewage program and Governor’s office agrees
 - January 2005
 - Final Model Review: 2005 – 2006
 - Final Report
 - Shift direct services to private sector in orderly fashion and to the extent possible
 - Concerns with indigent and low income
 - Change fees to more closely mirror charges by private sector
 - Shift AOSE program to DPOR
 - This was meant to reduce concern that the VDH was the judge, jury, and executioner that ruled over the private AOsEs
 - Did not explain how to reach the goal
 - How to transition the work in an orderly manner
- Important Legislation: 2007
 - HB3134
 - AOSE to COSE and AOSE
 - Onsite soil evaluators moved to Professional and Occupational Regulation
 - VDH AOSE regulation are being rescinded
 - Requires operation and maintenance for alternative onsite sewage systems
 - Web based reporting system
 - \$1.00 fee
- Important Legislation: 2008
 - HB 1166

- Developed from a 2007 bill (HB 1950) referred to the Housing Commissions
 - Addressed concerns from the engineering community that the Board's regulations did not easily allow deviations from prescriptive site, design, and constructive criteria.
 - GMP #146 developed
 - HB 2691, Schedule of Civil penalties
 - Presently under executive review
- Important legislation: 2009
 - HB 2551 and SB 1468
 - Emergency regulations to establish performance requirements for AOSS
 - Included deigns under VA code 32.1-163.6
 - Included O&M requirements from HB 3134
 - Emergency AOSS Regulations effective (2010 – 2011)
 - Final AOSS Regulations effective 12/7/2011
- Important Legislation: 2011
 - HB 2185
 - Every application include OWE/PE Report
 - Left in committee pending a study
 - Stakeholder interview process completed
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 - 10 meetings around the commonwealth from September 9, 2011 through October 6, 2011
 - Online survey and telephone interviews
 - Heard from over 300 stakeholders.
- HB 2185 Study
 - There is no one size fits all solution
 - Different regions with different characteristics
 - Number of private sector available
 - Volume of work available
 - Types of applications receives
 - Wishes of local government
 - Median income of citizens
 - Small and rural communities generally lack a competitive free marketplace
 - Fees
 - Number of private sector in those areas
 - Willingness of private sector to provide certain services
- Opportunities
 - Relying more on the private sector for primary services will –
 - Allow VDH to focus on core functions that protect public health and groundwater supplies
 - New and emerging responsibilities

- O&M program for AOSSs
- Enhanced data management and related program management
- Surveillance, enforcement, technical assistance
- Education and community outreach
- New responsibilities related to the Chesapeake Bay TMDL
- In the meantime
 - VDH has dual role of regulator and service provider
 - Doing the same work of the stakeholder you regulate presents unique challenges
 - Concerns about double standard
 - Concerns about motivations and unfair reviews
 - Concerns about QA/QC of internal staff

Questions

Three different types of applications?

- Different expectations from VDH perspective for certification letter vs. construction permit

Bare application – what does this mean?

- Definition in budget bill where fees are set
- Means doesn't have any private sector work supporting it (other than maybe certification letter or subdivision review, which is a service that VDH provides for free that weighs in on whether county requirements are met, minimum 10% level 2 reviews, 90% of counties say in order for VDH to do this private sector must have evaluated all lots)

Various types of application done in house – which requires which license or designer type?

- Regardless of type of application, must be OSE or PE work
- Once gets to health dept.... VDH has \$30,000 indemnification fund and enjoys sovereign immunity (no liability for VDH employee), DPOR could take action against licensee

Purpose of indemnification fund?

- Cover VDH negligence that caused system to fail
- Jim asked to clarify proprietary v. governmental role/whether VDH employees are indemnified for just oversight/approval or all work product – Dwayne wants this to be a discussion with the group

Cover wells too?

- Yes, this all applies to wells too

Does VDH approve/designate place for wells in all cases?

- Private sector can do this and required to show on site plan if they plan to install both

Permit expired and then renewed, change in designer (for example, private sector permit expires and then VDH comes in and does additional work)

- Expectation is that private sector will come in and do work again
- Policies in some health districts that once get subdivision planning, private sector must come back and do any related work. Other places public sector can come in and do work
- The only board that explicitly addresses that is the engineering board, which has a view on using another person's work, which is not yet clear because of copyright
- There is an 18 month window when the VDH has to keep an active record about what is going on with the project

Does the State provide guidance to the local counties in terms of how they are processing this workload, or is it determined on a case by case basis by the county?

- There are a few issues involved here. What typically happens is that in counties where they say you have to use the private sector for evaluation and follow up work, this decision is made by that specific county, rather than the state VDH
- In other counties, health programs believe that they must handle each permit because there is no law banning them from handling them
- There is no central database of the policies at each local health department. What generally happens is, if there are complaints about the local department those complaints are shot up the chain to the larger health department offices.
- UNICO
- Concern that some areas in the state have a lot of input, where other do not

Resume presentation...

Health Department Funding: Key Concepts

- There are five optional forms of county government provided by Title 15.2:
 - The county board form
 - The county executive form
 - The county manager form
 - The county manager plan, and
 - **The urban county executive form**
- Options for Urban County Executive Form
 - Chapter 678 of 1994 Acts of Assembly
 - Be it enacted by the GA of Virginia: Option of certain counties to operate local health department under contract with the State Board of Health.
 - Notwithstanding any other provision of law to the contrary, the governing body of any county having the urban county executive form of government may enter into a contract with the State Board of Health to provide local health services in that county.

- The local governing body shall operate the local health department.
 - State funds for the operation of health services and facilities shall continue to be allocated to any county which has elected to provide health services by contract as if such services were provided in a county without such a contract.
 - 15.2-801. Adoption of urban county executive form.
 - Any county with a population of more than 90,000 may adopt the urban county executive form of government in accordance with the provisions of Chapter 3 (15.2-300) of this title.
 - 32.1-32. Independent local health departments
 - A. The governing body of any county or city which does not enter into a contract with the Board for the operation of the local health department shall appoint the local health director and may appoint a local board of health to establish policies and to advise the local health department.
 - B. Each local health director and local board of health appointed by a governing body shall enforce all health laws of this Commonwealth and regulations of the State Board of Health.
 - Fairfax County is Different
 - Chapter 678 of the 1994 Acts of Assembly
 - An urban county with an executive form of government can provide local health services
 - All employees are county employees (not state)
 - Exempt from certain requirements: Va. Code 32.1-163.5
 - Va. Code 32.1-163.5
 - Shall accept private site evaluations and designs
 - Not required to perform a field check
 - Deemed approached if not acted upon in certain time frames
 - Nothing shall authorize anyone other than a PE to engage in the practice of engineering
 - 95 Counties and 35 health departments
 - Cooperative agreements
 - Health departments provide services in the following areas
 - Communicable diseases
 - Child and materials health
 - Emergency preparedness
 - Family planning
 - Oversight of hospitals, nursing homes, and adult homes
 - Dental services and other clinics
 - Environmental health
 - Restaurants, food outbreaks
 - Drinking water, springs, well, cisterns
 - Sewage systems, community systems, AOSS, COSS, failures, voluntary upgrades, operation and maintenance, Chesapeake Bay TMDL

- Campgrounds, pools, hotels
- Milk plants
- Marina inspections
- Rabies investigations and animal confinements
- Are the employees all state employees at the departments? Not necessarily, some are and some are not depending on the program. The counties are free to negotiate with the local health departments for additional health services, but they must be paid for within the local district.
- The county may have its own ordinances which it asks the department to enforce, but there is not necessarily any money in providing the service (?).
- Fiscal Year data displayed on a chart
- Chart about OSE work, etc. in slideshow
 - Demonstrates that the private sector is more involved in new construction
 - Requested that the data used to form the charts be shared
 - Discussion about the meaning of the charts. It seems that the private sector is starting to do the majority of the work, but the data set used for the charts is only a small subset of the total data. Seems that the private sector is more involved in systems installations in new development rather than system repair because new development is more profitable because it doesn't take as long and it isn't sensitive. Brought up that the areas where the private sector isn't well established doesn't even have many options.
 - Request to provide all source data from house build 2185 study to the group
- Cooperative agreements
 - Cooperative agreements cover both mandated and non-mandated health services:
 - The code of Virginia requires Health to fund at least 55 percent of the mandated services
 - A locality can opt to provide services unique to its jurisdictions; local governments must fund 100 percent of any of these unique local services
 - Three primary funding sources support the onsite sewage and water supply program: the general fund, local matching funds and permitting fees.
 - VDH does not charge for many of its services but customers pay to process two types of applications
 - Onsite sewage system and private water supply
 - Non general fund revenues
 - Prior to 2002, VDH charged \$75 to process onsite sewage applications and \$40 to process water supply applications
 - These fees were never meant to gain 100% of the cost, but to recover some of the cost for delivering services
 - From 2002 through 2007, VDH charged \$112.50 and \$77.50 respectively for these services
 - During 2008 VA GA session, VDH was prompted to examine its costs for processing the two types of applications

- How was it decided that the bare application fee was \$350, or how were any of the other fees as they stand decided? They were set by the legislature.
- How many employees does the VDH have involved in the onsite septic program? Hard to give a manpower total because many people work on many different things. Also difficult because of the difference in different regions of VA. How many OSEs work for the VDH? In the 300 range. Can get that number. Request to get data about who works on the onsite septic program within the VDH *
 - Mentioned that most of the OSEs that work within the state work for VDH and yet the private sector is delivering a large amount of the services. Point that the private sector is remarkably efficient.
- What percentage of the VDH budget is general funds, and what is
- No Revenue Activities
 - Customers continue to receive non-fee services from VDH, including the following:
 - Repair wells
 - Repair onsite sewage systems
 - Voluntary upgrades
 - Complaints, rabies investigations, animal confinements
 - Courtesy reviews
 - Construction inspections and follow-up inspections
 - Preliminary engineering reviews
 - Subdivision reviews
- Non-general Fund Revenues
 - Prior to 2002, VDH charged \$75 to process onsite sewage applications and \$40 to process water supply applications
 - From 2002 through 2007, VDH charged \$112.50 and \$77.50 respectively for these services
 - During the 2008 Virginia General Assembly session, VDH was prompted to examine its costs for processing the two types of applications
 - VDH calculated its costs and suggested new fees to reflect its costs
 - Fees not wholly based on the cost to deliver the actual service
 - Filling in lost fund revenue
 - No fees established in the budget bill
- Local fees in addition to state fees
 - Monies collected generally offset local governments cost for health department services pursuant to the cooperative agreement
 - Excerpt from a county with local fees:
 - Fees for evaluations and permits shall be set by the board of county supervisors and shall be paid to the director of finance at the time that application is made
 - Upon submission of an application, the health director may evaluate existing individual sewage disposal systems and/or individual water supply systems and issue a written report thereon. A fee as established

by the board of county supervisor shall be paid to the director of finance at the time that an application request is made.

Question: If there is a fee set for service by the GA, if the fee for service for your staff to go out and provide a service at \$425, what is the markup depending on the local?

- There is not a single place in the state where the fees cover the full cost of the service. The reason is that there is a public good that is provided by these services. The notion of the GA is that when someone pays for the fees for corrective services, that person is helping the public and the environment by getting the right work done. Therefore, people pay taxes to ensure that that protective works are done.
- Idea that the public has a responsibility to subsidize people's property, to some extent.
- If this is indeed just a true building subsidy, rather than a public cost to protect the environmental health, then we need to look into it.

VDH SHIFT Stakeholder Advisory Committee Meeting

August 8, 2013, 10 a.m. – 3:30 p.m.

The Upper Covenant School, Charlottesville, Virginia

Meeting #2 Summary

Facilitated by the Institute for Environmental Negotiation

Executive Summary

The SHIFT Stakeholder Advisory Committee has been tasked by the Virginia Department of Health with producing a report of recommendations to advise the agency on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment. The committee met for the first time in July 2013.

This document is a summary of the second SHIFT Stakeholder Advisory Committee meeting, held in early August. During this meeting, participants built further understanding of the SHIFT goals, brainstormed ideas for potential changes to the onsite septic program to facilitate increased privatization, and began identifying areas of agreement within the committee. The committee will meet again in late August to continue developing common ground. The next SHIFT Stakeholder Advisory Committee will take place on Thursday, August 29th at 10 a.m. at Northside Library in Charlottesville.

Welcome Back & Introductions

Forty-six people met at the Upper Covenant School in Charlottesville, Virginia on August 8th for a VDH Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee meeting. Frank Dukes, Tanya Denckla Cobb, and Kelly Wilder from the Institute for Environmental Negotiation (IEN) at the University of Virginia facilitated the meeting. This meeting was the second in a series intended to lead to consensus recommendations concerning the future of the onsite septic program in Virginia, with the hopes of maximizing private sector involvement in the new program to the greatest extent possible.

The facilitators welcomed participants to the meeting and asked everyone to briefly introduce themselves. Three new members, John Ewing, John Powell, and Jimmy Bundick, were added to the committee after the first meeting, and they were welcomed to the group.

After introductions, Tanya presented the meeting agenda, which included time for:

- Welcome Back & Introductions
- Sharing News and Developments Since Last Meeting
- Reviewing Information Requested
- Building Understanding of SHIFT Goals
- Reviewing Criteria/Goals for the New System
- Developing Ideas to Build Ideal System
- Identifying Areas of Agreement
- Public Comment
- Setting Next Steps

News and Developments Since Last Meeting

After reviewing the meeting agenda, Tanya opened the floor to any announcements from the SHIFT Advisory Committee members before proceeding. The following news and developments were shared with the group:

- The Accomack County Attorney submitted a letter to the VDH on behalf of the Accomack County Board of Supervisors opposing the SHIFT goal of maximizing privatization of the onsite septic program. In a conversation Tanya had with the County Attorney, this position was explained as a reflection of the high poverty on the Eastern Shore and the concern that privatization will lead to systems that cannot be afforded by most of its residents. Currently the VDH provides a high-value and high-quality service that is trusted by Eastern Shore citizens, and the Eastern Shore believes strongly that this service needs to continue. Privatization, because of the potential for over-design and over-pricing, risks marginalizing an entire population and thereby creates new risks for environmental and public health.
- As part of the SHIFT initiative, the OEHS has been meeting with district staff from around the state about this process to help brainstorm and collect ideas. The group will be drafting up a document containing some of the staff ideas that emerge from around the state.
- A Northern Virginia builders group heard about the SHIFT initiative and took a firm position against total privatization. The group states that although only a small part of the onsite septic work is currently done by the VDH, they want to maintain the availability of VDH work as an option due to concerns about potentially worsened work quality and higher cost incurred by increased privatization.
- The Governor has approved the VDH's new civil health regulations.
- A public comment period will open soon repealing the authorized onsite soil evaluator regulations: <http://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=6592>. Committee members might be interested in reading the comments that are posted.

Reviewing Information Requested

After announcements were shared, Dwayne Roadcap, a VDH resource member, presented the information that was gathered by VDH in response to the data requests made by the committee during the first SHIFT meeting. Dwayne explained that the collected data would be accessible via the VDH website:

www.vdh.state.va.us/EnvironmentalHealth/Onsite/SHIFT/schedule.htm, under “Additional Data Request.”

After initial analysis, VDH staff explained their conclusions from the requested data to answer some of the questions raised in the first meeting. One analysis, as explained by DPB resource member Larry Getzler, revealed that about 20 percent of the cost of VDH onsite septic services is covered by the fees collected by VDH for those services. More detailed economic analyses will be offered at future meetings.

After presenting the gathered data, Dwayne asked participants to check the data to make sure that all requests were met and to see if there is any additional information they would like gathered before the next meeting. Dwayne and Allen Knapp, another VDH resource member, asked that participants provide the most specificity possible about the requested information in order to conserve time and in case there are data that better meet the needs of the group. Allen also requested of participants that the focus of the committee’s data requests be on information that will help move the SHIFT process forward, so that members can be thinking toward the future, rather than on information that can be used only to analyze the current and past programs. The following additional information was requested:

- A report about backlog data in the Commonwealth. Specifically, what is the difference between the time it takes for the VDH to process applications submitted directly to them vs. applications initially handled by a private AOSE?
- Information about Missouri, Washington State, and North Carolina’s onsite septic programs, which have shifted to privatization.

Building Understanding of SHIFT Goals

After reviewing the requested information, Frank introduced the next step in the process: designing a system that will get us from where we are now to where we want to be. He reviewed the criteria and goals set by meeting participants in the first meeting:

Criteria/Goals for Success

The new system will:

1. Protect Environmental and Public Health
2. Build Public Trust
3. Promote Shared Responsibilities and Ethics
4. Assure Access to Services For All
5. Be Funded Appropriately and Sustainably
6. Be Clear about Roles and Expectations
7. Be Supported with Enthusiasm by All (VDH and Private Sector)
8. Foster Public Awareness and Education

Participants reviewed these criteria to see if anything needed adjustment. One member requested that criteria #4 be amended to clarify that it is about equity and fairness. The revised criteria are:

Criteria/Goals for Success

The new system will:

1. Protect Environmental and Public Health
2. Build Public Trust
3. Promote Shared Responsibilities and Ethics
4. Assure Affordable Access to Services For All
5. Be Funded Appropriately and Sustainably
6. Be Clear about Roles and Expectations
7. Be Supported with Enthusiasm by All (VDH and Private Sector)
8. Foster Public Awareness and Education

To start the discussion, Tanya asked the meeting participants to rank (on a scale from 1 to 10, 10 being the best) how well the current onsite septic program is addressing the eight goals set by the group for the future program. She explained that this exercise would accomplish two things:

- a) Provide a point of reference for the group's final recommendations (i.e., do the final recommendations meet these goals better than the current system?).
- b) Build deeper understanding among the SHIFT members about each other's perspectives.

The results of this exercise revealed that committee members have different opinions about the successfulness of the current onsite septic program – the rankings ranged from 1 to 8 out of 10 (average 5.85).

Once everybody shared their rankings, Frank asked the participants who ranked the current program the highest to share reasons for their perspective. Those participants expressed that their local health services offices are doing a great job at providing services for a good value, which they believed to be especially true in rural areas. From their perspective, it seems as if the system works about as well as it could possibly work. They also expressed that most of the goals set for the future program are already being met under the current program. These participants expressed concern that the open market had not naturally led to increased private

sector services in many areas of the state. Even after ten years of privatization in other parts, forcing privatization throughout the state might not be economically optimal. Additionally, they explained that there is an open and reliable understanding about the current program. However, none of these participants ranked the current program higher than an 8 because they believe that there remains room for improvement, primarily by improving the staff training and the resources available.

Frank then asked the participants who ranked the current program the lowest to share the reasons for their perspective. These participants mentioned a number of concerns with the current program, including a perceived conflict of interest in the current program, in that VDH is both a competitor and regulator of the private onsite septic providers. VDH staff can design, permit, and inspect a system. The current VDH fee system doesn't fully cover the costs of the direct services provided, meaning that the direct services provided by VDH are subsidized; some suggested this gives VDH a competitive advantage over its private sector competitors. These participants suggested that, in order to improve the program, VDH must limit its role to oversight and stop competing with the private sector by providing direct services.

Finally, Frank gave any other meeting participants who had not yet spoken about their assessment of the current program an opportunity to speak. The following thoughts and concerns were shared:

- A member expressed that a main problem now is that there is sewage on the ground. This is due to the number of septic systems in the state that need repairs but aren't being repaired because either the work is too expensive, the VDH isn't overseeing the current systems thoroughly enough, or the homeowners simply don't understand enough about their septic systems to be able to recognize system problems before it's too late. It was expressed that the failure of septic systems, and the lack of timely repairs, presents a risk to public health and needs to be addressed to the greatest extent possible.
- Another member shared the concern that some system designers are getting away with doing shoddy work and some VDH inspectors are not doing a good enough job of inspecting systems. This problem is made worse by the fact that there currently isn't a good way of reporting the bad actors. Bad actors are not reported because there is a history of backlash and blacklisting. The SHIFT recommendations need to be carefully crafted to ensure that the program isn't made worse by increasing privatization without creating a workable system for reporting and addressing problems that already exist.
- A member shared the concern that there are also conflicts of interest within the private sector, because certain designers and manufacturers have agreements to use each other's services and products, rather than selecting services and products based on the best fit for each individual job.
- Some members shared a concern that existing problems are due to the fact that some of the regulations are simply not being followed and that there isn't a widely respected code of ethics.

- A number of members shared their concern about a lack of consistency in how things are handled within the septic program throughout the state is problematic because it makes it difficult to handle work in different parts of the state and even restricts easy access to information in some cases. This inconsistency also extends into how permitting is handled, because people filling similar roles handle permits differently depending on where they work in the state.
- Another concern expressed was that inspections of built systems are sometimes not done as seriously as they should be, which is problematic because inspections are what assure the system was installed according to the design and will work properly: inspections are where the rubber meets the road.

Brainstorming the Ideal System: What is Needed to Create a System that Meets All the Evaluation Criteria?

Frank then explained that the next part of the meeting involved group brainstorming. As part of this process, meeting participants were asked to think about the necessary components of an ideal septic program that maximizes privatization while also meeting the group's criteria and goals. It was explained that, at this stage, no ideas would be critiqued or challenged in terms of their viability, and that participants should feel free to share any and all ideas that occur to them. Proposing an idea would not mean that you were committed to supporting the idea. For the first step, Frank asked that meeting participants take a few minutes to write down some of their ideas. After that, participants were given the opportunity to share their ideas with the group. The following ideas were voiced:

Areas of Agreement

Once everyone had a chance to speak to their ideas for a future program, the group began identifying and acknowledging areas of agreement. Although the group will have more time to identify and discuss areas of agreement at the next meeting, these areas of agreement were proposed:

1. Roles and responsibilities:

- a. VDH will provide regulatory oversight, which includes all duties that do not require a license. More specifically, VDH will:
 - i. Conduct inspections.
 1. (IDEAS needing further discussion: Within 48 hours? Should VDH be required to inspect all systems? Should it be provide level 2 reviews *before* the permit is drafted?)
 - ii. Manage policy.
 - iii. Draft and issue operating permits.
 - iv. Maintain and manage records and data.
- b. VDH will not provide soil evaluation and design, EXCEPT:
 - i. In some parts of the state, under certain circumstances (*To be discussed further – needs more detail*)

- ii. In the event of an emergency, when emergency repairs are needed (*To be discussed further – needs more detail*).
- iii. *Needing discussion*: what if VDH needs to be onsite more than one time?
- c. Private sector will provide soil evaluation and design, installation, and covers the septic system, except in cases noted in (1B)
 - i. *Needing discussion*: Should use of the private sector be incentivized or mandated?
 - ii. *Needing discussion*: What about where site evaluation and design may be particularly variable?

Establishing Next Steps

Before ending the meeting, the group discussed what additional information was needed in order to continue making informed decisions and to provide feedback about the meeting space and organization so that the IEN could accommodate any requests in the future.

The committee members expressed that, if possible, they would like access to the following additional information:

- Records of the alternative systems by county for the past 2-3 years (number of systems, the number of inspections, and the number visits statewide).

The meeting participants shared the following feedback about the meeting space and organization:

- Members expressed appreciation for how the meeting was facilitated.
- Members expressed that the meeting summary from the first meeting was done well, and reiterated the importance of finalizing and sending it out as soon as possible.

The next SHIFT Advisory Committee meeting will take place from 10 a.m. to 3:30 p.m. on Thursday, August 29, 2013 at the Northside Library in Charlottesville, Virginia. The purpose of the next meeting will be to continue the discussions started at this meeting, beginning with the proposed areas of agreement.

Stakeholder Advisory Committee Participants:

- Tony Bible – AOSE
- Jim Bowles – VDH Office of Environmental Health Services
- Jimmy Bundick – Bundick Well & Pump Co., VA Well Water Assoc. VP
- Vincent Day – Sewage Handling and Disposal Advisory Committee
- Ed Dunn – Virginia Environmental Health Association
- John Ewing – Old Dominion Onsite, Inc.
- Sandra Gentry – Manager of Gentry Septic Tank Service, Secretary of VOWRA
- Jeff Gore – Legislative Liaison for Loudoun County
- Dan Holmes – Piedmont Environmental Council
- Scott Honaker – Environmental Health Manager of the Mt. Rogers Health District
- Erik Johnston – Director of Government Affairs, Virginia Association of Counties
- Dave Lentz – Regulatory Director at Infiltrator Systems Inc.
- Curtis Moore – VOWRA Representative, AOSE
- Joel Pinnix – President of Obsidian Inc., ACEC, VSPE
- John Powell – Powell’s Plumbing, VOWRA BOD
- Bill Sledjeski – CPSS and an AOSE
- Jim Slusser – President of the VA Association of AOsEs, practicing AOSE
- Bill Timmins – Sewage Handling and Disposal Advisory Committee
- Mike Toalson – Chief Executive Officer of the Home Builders Association of Virginia
- Jeff Walker – President Elect of VAPSS
- Larry Wallace – Virginia State Program Manager of SERCAP
- Neil Williamson – Governmental Affairs Director at Charlottesville Area Assoc. of Realtors

Resource Members:

- Mark Courtney – DPOR
- Larry Getzler – DPB
- Allen Knapp – VDH
- Dwayne Roadcap – VDH

IEN Facilitation Team:

- Tanya Denckla Cobb
- Frank Dukes
- Jason Knickmeyer
- Kelly Wilder

Meeting Observers:

- Tim Baker – VDH
- Alan Brewer – Loudoun County
- Danny Bundick – Bundick Well & Pump
- Chris Costa – Fairfax County
- Pete Duer – Bundick Well and Pump
- Todd Fowler – VDH
- Allen Gutshall – Central Shenandoah Health District
- John M. – Fairfax County Health Dept.
- Rob Marshall – AOSE
- Olo Olakanmi – VDH
- Danna Revis – VDH OEHS
- D. Ron
- Steve Simpson – VDH
- Dave Tiller – VDH
- Steve Vecchione – VDH

VDH SHIFT Stakeholder Advisory Committee Meeting

August 29, 2013, 10:15 a.m. – 3:45 p.m.

The Northside Library, Charlottesville, Virginia

Meeting #3 Summary

Facilitated by the Institute for Environmental Negotiation

Executive Summary

The SHIFT Stakeholder Advisory Committee has been tasked by the Virginia Department of Health with producing a report of recommendations to advise the agency on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment. The committee met for the first time in July 2013. This document is a summary of the third SHIFT Stakeholder Advisory Committee meeting, held in late August. During this meeting, participants worked in groups to generate more specific ideas for potential changes to the onsite septic program to facilitate increased privatization, and they continued to identify areas of agreement within the committee. The committee will meet again in late September to continue developing common ground. The next SHIFT Stakeholder Advisory Committee will take place on Thursday, September 26th at 10 a.m. at the English Inn in Charlottesville.

Welcome Back & Introductions

Thirty-four people met at the Northside Library in Charlottesville, Virginia on August 29th for a VDH Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee meeting. Frank Dukes, Tanya Denckla Cobb, and Kelly Wilder from the Institute for Environmental Negotiation (IEN) at the University of Virginia facilitated the meeting. This meeting was the third in a series intended to lead to consensus recommendations concerning the future of the onsite septic program in Virginia, with the hopes of maximizing private sector involvement in the new program to the greatest extent possible.

After welcoming all group members back and providing time for each meeting participant to introduce themselves, Frank re-introduced the charge of the SHIFT group, which is to 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. Frank then reviewed the overall process and nature of consensus, emphasizing the idea that group members need to be working with and listening to each other in order to

develop a set of consensus recommendations, rather than trying to convince the VDH and the IEN about what has or hasn't happened in the past or what actions should be taken.

Frank also reviewed the prior meeting requests/guidelines and the process "parking lot," both of which lists are included here:

Request/Guidelines (running list):

- Efficiency (respect people's time).
- E-tiquette (limit cell phone use during meetings, and take phone calls outside).
- Clarify concerns and disagreements, don't assume that people understand.
- Produce timely meeting summaries.
- Use name tents to catch facilitator attention when needed in discussion.
- Speak to others from one's own perspective.

Parking lot:

- Hold fewer meetings and work efficiently: *the IEN is trying to design meetings to be efficient, so that all work can be accomplished in 7 or fewer meetings.*
- Effective use of technology in communications: *the SHIFT can now access all documents on the VDH website.*
- Possible small group work: *May be helpful for technical topics (but not too many): we will be doing small group work today in this meeting.*
- ID comments (track specific interests): *the IEN does not produce meeting summaries that attribute comments to specific people, unless is it a formal response by an organizations that has been requested to provide this formal response.*
- 2012 VDH permit data: *VDH will report on these data.*
- Enable taking comments from public during the meeting: *the meeting agendas include time for public comment, and there is also a mechanism online for people to submit comments.*
- There are two functions of VDH – proprietary and governmental.
- Privatization of well drillers: *are they excluded from this conversation? Discussed later in the meeting.*
- Electronic submission of onsite permit work and permit requests would save time and money.

After the committee reviewed the requests/guidelines and parking lot, Dwayne Roadcap, a VDH SHIFT resource member, spoke for a few minutes in response to a specific question from a member about why the SHIFT Stakeholder Advisory Committee was assembled, rather than discussing the SHIFT issues within the already established Sewage Handling and Disposal Advisory Committee (SHADAC). Dwayne explained that the VDH chose to form a new committee, the SHIFT Stakeholder Advisory Committee, instead of using the SHADAC group for three reasons. First, the SHADAC group doesn't have as broad of a representation as was deemed optimal for this process. He explained that the chosen members of the SHIFT committee represent a much broader constituency, both professionally and regionally. Second,

the VDH believed that it needed direct representation as a stakeholder in the SHIFT group, which could not be accommodated in the SHADAC committee because it does not allow the VDH a vote. Third, the SHADAC is run by majority rule, rather than by consensus, and the VDH decided that a consensus-based approach would better allow for important stakeholder voices to be heard and discussed, thereby strengthening the group's potential for success.

After Dwayne re-affirmed the reasoning for the formation of the SHIFT Stakeholder Advisory Committee, Tanya presented the meeting agenda, which included time for:

- Welcome Back & Introductions
- Developing Specific Recommendations, Carousel Exercise, Round 1
- Developing Specific Recommendations, Carousel Exercise, Round 2
- Discussion Wrap-up
- Public Comment
- Meeting Wrap-up

Developing Specific Recommendations, Carousel Exercise

For the majority of the meeting, committee members worked in small groups to generate more specific ideas for the draft proposal. A carousel type process was implemented to facilitate the small group discussions and to ensure that every committee member had an opportunity to contribute to every topic. This process was divided into two sessions, one held in the morning and one held in the afternoon. During each session, the committee was randomly divided into three groups and each group was assigned to a specific work station where they were given an initial topic of conversation. The groups spent an hour discussing their initial topic to ensure that a solid base of ideas was developed. After that hour, the groups cycled through the other two stations, spending 15 to 20 minutes at each of the other two, so that every committee member was ensured an opportunity to contribute to each of the discussions. By the end of the two session process, every member was allowed time to speak to each of the six topics and the groups had assembled a large number of specific ideas for the draft proposal. The six topics discussed included:

Morning Carousel Discussion Stations

1. Roles and Responsibilities, with attention to Access & Affordability
2. Orderly Transition
3. Fee Structure/Funding & Transition

Afternoon Carousel Discussion Stations

4. Quality Assurance/Education/Professionalism
5. Checks & Balances
6. Economic Impacts

Before beginning the small group work, Tanya explained that participants would be asked to review the existing ideas (provided in the meeting handout), add to these ideas, and develop their ideas more fully and specifically for transitioning to the new onsite septic program. She emphasized that this work would not end with *final* recommendations, but with a more fully developed set of *draft* ideas for recommendations. With that in mind, the committee split into groups and began discussing the topics. The ideas developed at each discussion station are provided at the end of this meeting summary in the Appendix.

Discussion Wrap-up

After the carousel process ended, committee members were invited to walk around the room and read through all of the ideas recording during the discussions. They were asked to place sticky dots next to ideas that they could support or would like to see move forward, which would enable the IEN to gauge the feasibility and popularity of certain ideas. Before the next meeting, the IEN will organize all ideas that were offered during the meeting and begin the process of crafting them into formal recommendations for comment and changes by the committee.

After allowing time for members to walk around and indicate their support for certain ideas, Frank then invited committee members to share their thoughts about areas of agreement identified during the discussion process. The following areas of emerging consensus were shared:

- There seems to be general agreement that VDH should maintain a strong oversight role in the new onsite program.
 - A member requested a formal test for consensus on this point about the VDH role, and the committee did support it by strong consensus. (26 “3s” and two “2s”) Two individuals indicated their support was not at the 3-level because certain details still need to be hashed out.
- In general, some variation of “pro bono” work has high levels of support.
- There is general support for the idea that fees should go to support repairs for those who can’t afford them.
 - A VDH member reported that this idea is also gaining traction among VDH staff, based on the eight regional staff meetings held to date.
- There is strong support for all soil evaluation and design work being done under licensure.
 - A member requested a formal test for consensus on this point, and the committee did support it by strong consensus (25 “3s” and three “2s”).
 - One member noted, however, that this does not allow for the case of someone in training working under licensed person.
 - Clarification: Everybody who is doing site evaluation and design should be doing it under auspices of a licensed individual.
 - There is still clarification needed on whether VDH staff *reviewing* designs also need a license. One possibility is that just those doing the design need a license;

another possibility is that a designer should expect his work to be reviewed by a similarly qualified person (though that's not required by law).

- There is general agreement that resources are needed to facilitate the transition and program funding.
- There is general agreement that permits should be submitted electronically, which would make both the submission process and the review easier. Online applications might also make it easier for the applicant to know immediately if the application meets the regulations, by virtue of automatized features and parameters. More needs to be discussed about the role of technology.
- More discussion is needed about the bare application process and whether it should go through the same level of review as other applications. A member shared that people are looking for a level playing field.

Frank then asked the committee for overall feedback on the work group process. Committee members shared this feedback:

- The small group format was good.
- One member thought the small group format was productive but he had been cut off by the need to rotate to a different station. If we did this again, he hoped there would be more time.
- There was not enough time allowed for dots exercise.
- Too hot – A/C should have been cooler.

Public Comment

No public comments were offered.

Meeting Wrap-up

Before ending the meeting, the group discussed what additional information was needed in order to continue making informed decisions and to provide feedback about the meeting space and organization so that the IEN could accommodate any requests in the future.

The committee members expressed that, if possible, they would like access to the following additional information:

- Information on the professional code of conduct and ethics.
 - 12 VAC 5-6.15.
- A map of private providers – to identify if there are low-service areas, and where.
- Privatizing permitting of wells – is this on the table too?
 - Dwayne clarified that wells are usually done in conjunction with sewage. Currently, the private sector can propose and inspect wells. The two are intricately related. The question is what to do when it's only a well application. Whether VDH should get out of wells is a fair question to ask.
 - This will be added to the next meeting's agenda.
 - Provide GMP141A on well permits.
- What information would be helpful for Larry Getzler to provide?
 - An important VDH goal is to stay “revenue-neutral” through the transition. How might this be achieved?
 - It would be helpful to understand the economic impacts of different proposals on the table – including the idea of raising VDH fees to have parity with the private sector.
 - It would be helpful to understand different mechanisms for incentivizing expansion of the private sector in areas where there is low service.
 - It would be helpful to better understand the economic impact on housing/building.

The next SHIFT Advisory Committee meeting will take place from 10 a.m. to 3:30 p.m. on Thursday, September 26, 2013 at the English Inn in Charlottesville, Virginia. The purpose of the next meeting will be to build consensus on recommendations and to develop draft recommendations.

Stakeholder Advisory Committee Participants:

Tony Bible – AOSE
Jim Bowles – VDH Office of Environmental Health Services
Ed Dunn – Virginia Environmental Health Association
John Ewing – Old Dominion Onsite, Inc.
Sandra Gentry – Manager of Gentry Septic Tank Service, Secretary of VOWRA
Jeff Gore – Legislative Liaison for Loudoun County
Dan Holmes – Piedmont Environmental Council
Erik Johnston – Director of Government Affairs, Virginia Association of Counties
Dave Lentz – Regulatory Director at Infiltrator Systems Inc.
Bob Marshall – President of the VA Association of AOSEs, practicing AOSE
Curtis Moore – VOWRA Representative, AOSE
John Powell – Powell’s Plumbing, VOWRA BOD
Steve Simpson – Environmental Health Manager of the Mt. Rogers Health District
Bill Sledjeski – CPSS and an AOSE
Bill Timmins – Sewage Handling and Disposal Advisory Committee
Mike Toalson – Chief Executive Officer of the Home Builders Association of Virginia
Jeff Walker – President Elect of VAPSS
Larry Wallace – Virginia State Program Manager of SERCAP
Neil Williamson – Governmental Affairs Director at Charlottesville Area Assoc. of Realtors

Resource Members:

Mark Courtney – DPOR
Larry Getzler – DPB
Trisha Henshaw - DPOR
Dwayne Roadcap – VDH

IEN Facilitation Team:

Tanya Denckla Cobb
Frank Dukes
Jason Knickmeyer
Kelly Wilder

Meeting Observers:

Josh Czarda – VDH
Tim Wood – Infiltrator Systems, Inc.
Jack McClelland – VDH
Eric Aschenbach – VDH

Meeting #3 Appendix: Developing Specific Recommendations

During the VDH SHIFT Stakeholder Advisory Committee meeting on August 29th, 2013, committee members formed work groups and developed specific ideas for a new onsite septic program. Six main topics, all pertinent to the VDH SHIFT charge, were discussed. Committee members also had an opportunity during the meeting to review the many ideas that emerged and to express their support for them by placing sticky dots next to them. This document contains the ideas and recommendations shared during the work group discussions. It also identifies the level of support given to each idea by indicating how many sticky dots were placed by each idea (represented by the number inside of the brackets at the end of each idea).

Discussion 1: Roles and Responsibilities

During this discussion participants addressed key concerns that: a) there may be too few providers in certain parts of the state, b) that access remain affordable in all parts of the state, c) that choice is critical and should be available throughout the state, and d) that VDH not assume liability for installed systems. [8]

Core recommendations include:

2. **Licensure:** All site evaluation and design work must be done under licensure, whether by private providers or state employees. [10]
3. **VDH Core Role:** VDH should a) provide regulatory oversight, which includes all duties that do not require a license; b) manage policy; c) draft and issue operating permits; d) maintain and manage records and data; and e) maintain ability to provide direct services in all regions of the state for construction and repair, but share best practices for incentivizing increased private sector delivery of these services.
4. **VDH Onsite Inspections:** The VDH may inspect any site at any time throughout the process.
5. **Level 2 Inspections (onsite inspections prior to installation):** VDH should conduct Level 2 inspections: (OPTIONS BELOW)
 - a. 100% of the time. [3]
 - b. Wherever it deems necessary, and, on a sliding scale up to 100% of the time in areas where soils present high risks. [3]
 - c. When requested by the Designer. The VDH should establish a mechanism by which Designers may request for more high-risk sites more “integration” with VDH review and guidance throughout the process. [2]
 - d. Whenever required and funded by the County. [4]

6. Dual Final Inspection System (Post Installation): [12]

- a. The VDH role should be to inspect the installation to ensure that it meets the design in the following ways: a) it is located where specified in the design; b) it meets the sizing specifications; c) it complies in all ways with the regulations. The VDH final inspection should be within 48 hours of notice.
- b. If the VDH does *not* provide 100% final inspections, then all [installers? designers?] should be required to report the installation, and VDH would have the *option* to conduct an onsite final inspection:
 - i. at random (to ensure the installer is ready for inspection any time); and [1]
 - ii. risk-based, based on history, soil, lot size, proximity to water (public water and wells) and history with the contractor. [5]
- c. If the VDH *does* provide 100% final inspections, then:
 - i. VDH will need to ensure it is adequately staffed for this role. [7]
- d. The Designer role should be to inspect the installation to ensure that it is installed correctly and according to the design. [2]
- e. The VDH should issue an operating permit only after the Designer has signed-off on the inspection for correct installation. [2]
- f. Third-party inspections should be considered an option for special circumstances when the need to protect public or environmental health is urgent, and the VDH is not able to perform the inspection. [4]

7. **Liability:** Each party in the process of developing and installing the onsite septic system should assume liability for his part.

- a. The designer should assume liability for the design and ensuring that the system installed is per the design. [NB: This would require a legislative change by the General Assembly].
- b. The owner (homebuilder or owner agents) should assume full liability for the system for the length of the warranty (usually one year).
- c. The VDH should be liable only for its part of ensuring that the system meets regulations.
- d. If the VDH performed risk-based final inspections, then different levels of liability would ensue. Sites that receive final VDH inspections would have lower liability, and those that do not receive final VDH inspections would have higher liability. The higher liability would be enforced by requiring a bond with licensure (similar to the home building licensure model). [2]

8. **Exceptions for Emergencies:** At a minimum, VDH may do site designs in case of public health emergencies (e.g., failed systems, repairs, discovery of straight discharge to surface waters). [6] Its highest priority should be repairs. Criteria for enabling this exception are:
- a. A referral service for the private sector should be established, and homeowners provided with this information.
 - b. If the homeowner meets a “means testing” (income threshold) homeowners should have access to:
 - i. a fund that will enable them to pay a private provider, or
 - ii. VDH design assistance, when a standard design is appropriate. When a standard design is not appropriate, the VDH will deny the application and refer the homeowner to a P.E. or OSE for the design of an alternative system. [1]
 - c. **OUTSTANDING QUESTIONS:** should VDH be able to design alternative systems?

If the homeowner won't allow access to the property, local building officials must force an eviction by pulling the Occupancy Permit.

Discussion 2: Key Transition Ideas

During this discussion, participants addressed key concerns about how the transition into a new onsite septic program could happen smoothly while minimizing the unintended consequences of the transition.

Core recommendations from this discussion include:

1. **Begin the shift by focusing first on privatizing work in priority areas.** [6]
 - a. Onsite septic work for subdivision development.
 - b. Certification letter preparation.
 - c. Voluntary upgrades.
 - d. The VDH should never design.
2. **Find and share “best practices” for promoting a viable private sector,** from regions where the shift has occurred, to inform areas where the shift has not yet occurred. [3]
3. **Reduce VDH capacity gradually** to allow some continuity while incentivizing the private shift. [2]
4. **Shift to increased privatization on a schedule that will ensure a smooth and sustainable transition.**
 - a. Increase VDH fees gradually, on a schedule, to transition VDH out of providing those services that are to be provided by the private sector. [1]
 - i. This could involve specific targets (eg. >20%, 30%, 40%).
 - b. Transition certain services on a schedule [4]: first would be soil evaluation [1] and second design services [1].

- c. Determine schedule of the shift by region (address district and locality needs). Develop a schedule with targets, by date certain, on which VDH fees increase, then a schedule that would follow increases.
- d. Give advance notice to everyone, including especially the private sector, of phased sunset transition dates (this is to prepare the private sector to take on additional work as VDH reduces those services it provides, so as to ensure continuity in areas of the state that may currently be underserved by the private community). [5]

Discussion 3: Fee Structure

During this discussion, participants addressed key concerns about how the VDH fee structure will change as a result of the shift, what funding the VDH will need for the transition, how local departments and governments will be affected by the change in fee structure, and how to minimize unintended consequences resulting from the change in fee structure.

Core recommendations from this discussion include:

Recommendations for VDH fee structure (options):

1. The VDH should raise at least some fees to maintain its budget.
 - a. This new fee structure should better reflect actual cost [5] – this would be an administratively easy re-structuring to accomplish. The new fees could be:
 - i. Design fee~\$2,000 (includes permit).
 - ii. Permit fee~\$200-\$225 (w/supported work).
 - iii. Raise fees for application with supported OSE work.
 - b. Fee structure should reflect the impact of regulations on fees – complex/heightened requirements should entail higher costs. [2]
 - c. VDH fees should rise on some schedule but not immediately.
2. The VDH should either raise VDH fees for all services to the same level as the private sector or get out of the market.
 - a. Services provided by the VDH shouldn't be subsidized – should reflect true costs. [3]
 - b. VDH fees should reflect marketplace. [1]
3. Don't raise VDH fees.
 - a. There is no need to raise VDH fees – will mean they have more \$ for other work.
 - b. VDH fees stay the same in order to maintain the VDH budget. [1]
4. Decouple fees and services – make them independent of one another so that there is one (or a few) standard fees.
 - a. Perceptions of fair value if customer pays large fee for little work, or double charging if VDH fee and private sector fee overlap?
 - b. Would it be sufficient to cover costs?
5. "A la carte" fees structure/services (charging for each individual service, permit, etc.) vs. one all inclusive fee (which is how it currently is). [1]
 - a. A la carte fee structure would be more difficult to implement and administrate.

- b. Regardless of which is selected, the resulting structure should be revenue neutral for the VDH.
6. The VDH should make a fee structure that charges for regulation and enforcement roles.
 - a. (Annual?) inspections (with fee) by VDH to raise revenue. [4]
 - i. It would be important to ensure that the revenue generated would balance the cost of the VDH doing this work.
7. The VDH should find additional funding sources – need dedicated revenue source to support VDH services (for the common good). [1]
 - a. Need to maintain VDH budget by finding greater general fund support. [6]
 - b. Broad fee hikes are problematic.
 - c. VDH needs funding at current or higher levels. [3]
8. Consider MD’s flush tax model. [1]

Recommendations for repairs:

9. If VDH stops design work: [2]
 - a. Repair permit fees should cost less (or be frozen). [1]
 - b. Regular permit fees should be raised to better reflect cost.
10. Is there a natural carve out for undesirable work to be done by VDH, e.g. minor repairs (like Loudoun)? [1]
11. Fees should reflect costs, there should be no free services, not even for repair work. [5]
12. Distinction between repairs that require design and those that do not. [3]
 - a. Repairs that don’t require design work should be free. [1]
 - b. Repairs that do require design work should be charged a fee.
 - c. The fee system should reflect the complexity of the repair work. [1]
13. Not all repair services should be free – especially for high cost/value housing. [5]
14. Repairs cost 2-3x more than other work, so it would be worse for the VDH to offer repair services for free – “nobody expects free.” [1]
15. If it’s a real public health problem, the repair should be free/immediate.
16. The tax base should fund repairs. [1]
 - a. What if system was neglected?

Recommendations for an “indemnification fund”:

17. Shift/repurpose the current indemnification fund into a relief fund (which would be a needs based fund). [1]
 - a. Could design this new “relief fund” based on the general contractor model.
 - b. If VDH continues design work, some funds need to remain in the indemnification fund.
18. Would still need the indemnification fund during transition for required three year period. [1]
19. The fund can go to private sector too. [1]
20. All applicants kick into fund via a portion of their permit fee. [3]

Assistance for low income:

21. The state calculates assistance for school systems based on locality – would this system work for low income assistance within the new septic program? [2]
22. Could use another proxy like property value (or home value for land-rich) to determine eligibility for assistance?
 - a. Perhaps cost of septic work based on proportional amount of house value?
 - b. Sliding scale for fees based on income.
23. Increase all VDH fees to a level needed to maintain agency revenue and to include funding to support indigent/low to medium income citizens. [1]
 - a. Those with inadequate systems also need access to this fund.
 - b. Perhaps model this assistance after the SERCAP low interest fund?
24. Private sector shouldn't be subsidized unless low income. [7]
25. Accessibility to private sector should be incentivized. [1]

Overall recommendations:

26. Simplicity of the new fee structure is key. [2]
27. Maintenance stays w/private sector & inspection goes to VDH.

The following ideas were also mentioned during this discussion:

- SW VA – applications from low income demographic account for only less than 5% of the total applications, so the majority of applications are not from low income citizens. [2]
- Permit costs (and even total associated with septic) are a small % of cost of total home construction.
- Taxpayers are currently supporting those with ability to pay.
 - However, those people are also paying taxes.
- Unlikely we'll get back to the backlog levels of the boom referenced in the Hamm report, meaning that the backlog problem should not become a central problem. [1]
- Enough designers to pick up work from the VDH halt in most areas of the state. [5]
- Will additional duties at VDH balance lost work?
- Fees go to general VDH funding, not program specific.
- One standard of practice? Would expand VDH work and cost more. [5]
- Affordability to homeowner.
- Installation – if market can't support competition (risk of monopoly) then we're here too early. [1]
- Cost of septic fees to homeowners is a real concern. [1]
- Private sector permits should be prioritized. [3]
- Cost vs. performance – you get what you pay for.
- VDH viability important.
- Hold the program (funds) harmless. [2]
- Room for additional fees during transition.
- Maintain VDH baseline services/capacity – no layoffs. [3]
- Fear GA will take away support after shift – must prove funding still needed. [1]
- Cost of service needs to be covered (e.g., repairs).

- Cost of licensed/experienced people needs to cover costs of work.

Discussion 4: Quality Assurance/Education/Professionalism

During this discussion, participants addressed key concerns about how education can be used as a method of assuring quality, how the VDH can maintain expertise through the shift, and how elements of quality assurance, education, and professionalism can be established to minimize unintended consequences of the transition.

Core recommendations from this discussion include:

1. **Standards of Conduct:** The professional and ethical code of conduct for licensed OSEs need to be defined and/or clarified. (PROVIDE COMMITTEE WITH 615, GMP 126B.) [10]
2. **Training Needed for Transition:**
 - a. VDH inspectors should become certified or licensed. A training should be developed to provide this certification or licensure to VDH staff. North Carolina could serve as a model for this effort. Also, the VDH will need to review and update its internal Quality Assurance/Quality Control policy. [2]
 - b. VDH Staff and private sector providers need to be trained to use and gather GPS data for onsite septic sites. The standard used should be 10 feet.
 - c. If a variance is needed, the VDH and/or OSEs and/or PEs may pursue the design.
3. **Protecting Public Health:**
 - a. For all real estate transfers involving systems installed more than 5 years previously, the state should mandate an inspection by a licensed septic professional. [1]
 - b. The VDH should develop a multi-disciplinary District or Regional “Response Team” to respond to difficult situations. [5]
4. **Fees to Support New Inspection System:** To support the new inspection staff that will be needed at VDH, and the timely turn-around of inspections, the VDH should: (OPTIONS)
 - a. Charge one inspection fee at the end with the issuance of an Operating Permit.
 - b. Charge separate fees for each function used (reviews and inspections). [2]
 - c. Charge one fee up front with the issuance of a (Construction) Permit.
5. **Incentives for Increasing Privatization:** Incentives need to be created to incentivize the preferential use of the private sector, to encourage the private sector to expand its coverage, and to foster an organic change toward the private sector. [5]
 - a. Private providers should be (encouraged/required) to register with counties where they are willing to provide service.
 - b. The VDH should make this data on PE and OSE providers at the county level available to the private sector, to incentivize the private sector to move into that county.

- c. Where there is only one private providers (i.e., where there is no choice), or where cost for systems is above the regional average, then VDH may be allowed to do the design. [6]
- d. Thresholds should be established for when VDH is no longer able to do new construction design. [2]
- e. A homeowner that cannot afford a system should be given access to an assistance fund. [4]

Discussion 5: Checks and Balances

During this discussion, participants addressed key concerns about how the new, post-shift program can create choice and competition, especially in low-income areas, and how checks and balances can be developed to minimize unintended consequences of the transition.

Core recommendations from this discussion include:

1. **Use of education as a form of checks and balances.**
 - a. Upon sale of property, require inspection and education/handout for homeowner. [11]
 - b. Periodic mailing to owners of information (e.g. property tax mailing). [2]
 - c. Develop or expand an education program for realtors (Loudoun County model). [1]
 - d. A property sale would trigger new owner education through renewable operation permits. [8]
2. **Checks and balances on the role of the VDH in the new onsite septic program.**
 - a. VDH maintains a roster of OSEs. [3]
 - i. Add an electronic bidding forum to ensure that customers get a good deal on septic work from the private sector. [3]
 - ii. In exchange for joining the VDH roster, the OSE must agree to “x” hours pro bono work. [6]
 - iii. Charge a fee for listing OSEs on the VDH roster, with income from these fees going to subsidize low-income residents. [5]
 - b. Until the shift is complete – at time of a permit application, require VDH to disclose:
 - i. Limitations on their services (length of time, number of visits, design capabilities).
 - ii. Options for private provider of services.
 - iii. Other potential conflicts of interest, limitations, and options. [5]
 - c. To ensure reporting of conflict of interest – get DPOR staff together with VDH. [5]
3. Require licensed onsite professionals to report problems with onsite systems to local VDH. [5] (NOTE: this is already required, but may not always occur.) **Require periodic inspection of all systems** (not just alternative). [3] **Arrange for a public subsidy in under-**

serviced areas to provide services until the private sector has sufficient competition (the provider could be public or private). [2]

4. **Arrange for small business development support** (local economic development offices, state department of small business assistance). [1] **Eliminate some formal qualifications** (e.g., a degree) for certification to lower barriers to becoming a provider.

Discussion 6: Economic Impacts

During this discussion, participants considered how the transition could affect low and moderate income property owners, how supply and demand could ensure reasonable priced services, how changes in the housing market could affect the demand for services and the ability to provide timely services, and how to reduce the financial impacts from bad outcomes.

Core recommendations from this discussion include:

- Public funds should be focused on repairs because of the negative externalities associated with septic system failure.
 - There is less of an argument for the use of public funds for new construction (because small portion of overall cost of construction), and new construction should therefore be completely privatized.
- Education should be used as a means of reducing impacts of negative externalities. [2]
 - Perhaps implement a trigger system for when people are directed to education.
 - What is the additional cost to educate public?
- More standardization of rules/expectations will result from shift and will lower costs.
- Complex/big jobs should automatically go to the private sector. [3]
- Longer lead time will allow supply in market (providers) to develop. [4]
- Pro bono (or subsidized) work would fix some of concerns (and be good for public relations). [4]
- Start charging repair fees to customers from high income levels to subsidize low income. [5]
- “Indemnification fund” for private sector. [2]
- Use means testing when offering VDH-provided services (this is already possible).
- Development in addition to repairs, especially where limited development.
- How are fees reallocated as services are? Think about third party certification, time/cost of money.
 - Reduced VDH role → reduced fees? [1]
 - Reduced agency liability? [1]
 - Vs. increased VDH oversight.

Discussion:

- **Supply/demand**
 - Possible spiked cost of septic system in beginning will quickly level out as more providers enter market. [3]
 - Competition will keep prices reasonable. [4]
 - Short vs. long term – need to think about both.

- Long run → higher prices, but supply increase too.
- Possibility that there might not be an increased amount of work for AOSEs because of depressed building rates lately (regardless of discontinued VDH involvement). [1]
- Market drives type of development and figures in appropriate costs.
- Market force will limit prices, likely rather quickly. [2]
- Political acceptability for recalibration is larger question. [2]
- Quasi engineer OSEs have niche – if goes too high, PEs will come in. [1]
- Need enough OSEs during boomtimes to cover work. [1]
- **VDH**
 - VDH will eventually have to raise prices to make up for bare applications. [1]
 - Will the shift cause public employees to migrate to private sector? Likely.
 - Would EHS still be required to be OSE? Yes, must be if approving work. [1]
 - Training will occur in private sector, not other way around – it's not a fear that workers will train at the VDH then bail (as has been the case for years). [1]
 - Economically beneficial to VDH to shed this experience. [1]
- **Housing market**
 - Septic affects mortgage/price tag. [1]
 - Even 1% rise in housing cost (due to septic) will keep 1% more people in rental market. [2]
 - Not going to see downsizing and subdividing seen in 2000-2007.
 - Economic impacts on communities in addition to homeowners.
- **Concerns about costs to homeowners:**
 - Homeowners anticipate and concerned about rising costs. [6]
 - Will be financial impacts where have to go to private sector. [2]
 - Discontinued VDH involvement could pose an accessibility problem in certain areas in the short term. [6]
 - Owner occupied (residents more concerned) vs. rental (less concerned).
 - Impacts on LMI (low to moderate income) development? Higher impacts compared to high income? [2]
 - What about whole regions relying on VDH? – too much for pro bono to handle. [2]
 - Can we show counties relying on VDH that the numbers (of low income eligible for assistance) aren't actually as concerning as they think?
 - There is no right to sewer.
 - Yes there is. [1]
 - You don't deserve sewer just because you own lot. [1]
 - But a public policy decision that repairing failing systems is in the public interest has been made. [2]
 - Unknown where repair price point is since the VDH does free work. [3]

Related information needs:

- Data on # of systems, etc. needed. [2]
- Reasonable assurance based on data that there are enough providers and competition is needed. [6]

VDH SHIFT Stakeholder Advisory Committee Meeting

September 26, 2013 | 10 a.m. – 3:30 p.m.

The English Inn, Charlottesville, Virginia

Meeting #4 Summary

Facilitated by the Institute for Environmental Negotiation

Executive Summary

The SHIFT Stakeholder Advisory Committee has been tasked by the Virginia Department of Health with producing a report of recommendations on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment. The committee met for the first time in July 2013. This document is a summary of the fourth SHIFT Stakeholder Advisory Committee meeting, held in late September. During this meeting, participants discussed draft recommendations. Potential areas of agreement were identified and the language of the recommendations was discussed.

The next SHIFT Advisory Committee meeting will take from 10 a.m. to 2 p.m. on October 31, 2013 at the Virginia Department of Forestry in Charlottesville, Virginia.

Welcome Back & Introductions

Thirty-two people met at the English Inn in Charlottesville, Virginia, on September 26th for a VDH Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee meeting. Frank Dukes and Kelly Wilder from the Institute for Environmental Negotiation (IEN) at the University of Virginia facilitated the meeting. This was the fourth in a series intended to lead to consensus recommendations concerning the future of the onsite septic program in Virginia, with the hopes of maximizing private sector involvement in the new program to the greatest extent possible.

After welcoming group members to the meeting and providing time for meeting participants to introduce themselves, Kelly reviewed the meeting agenda, which included time for:

- Welcome Back & Introductions
- Process Review & Group Updates
- Discussion on Roles & Responsibilities Recommendations
- Discussion Wrap-up
- Public Comment
- Meeting Wrap-up

Process Review & Group Updates

Frank briefly reviewed the SHIFT Stakeholder Advisory Committee's progress with assembling a group of draft recommendations during the last meeting. He explained that the IEN has worked to organize them into a more manageable format so that the group could easily return to the discussion during this meeting. Frank then reminded the group that the purpose of this meeting was to drill down even more on individual issues and to figure out if there were any unnecessary draft recommendations, to identify which draft recommendations need the most work, and to establish if any of the draft recommendations are widely supported. It was emphasized that group members should consider how the group as a whole can work to meet the needs of everyone at the table as well as their constituencies.

After reviewing the group's process and clarifying the meeting's purpose, Frank and Kelly transitioned into updating the group on happenings since the last meeting. In the weeks after meeting three, a few sentiments in opposition to the SHIFT charge were shared with the VDH and the IEN. Letters from Accomack County, Scott County, and the Home Builders Association of Virginia expressed opposition to the shift to increased private sector involvement. The Virginia Association of Realtors has also indicated that their concerns about the SHIFT are similar to those of the Home Builders Association, although Neil Williamson reported that he is directed to continue to participate in the discussions. Erik Johnston also stated that VACO is opposed to the VDH no longer providing direct services, but clarified that VACO wants to participate in coming up with other ideas that can be agreed upon.

Frank assured the group that the IEN will talk to the counties that sent letters of concern to gain a better understanding of their interests and to identify their key concerns. He reminded the committee that, even if organizations are opposed to the shift, groups can benefit by engaging in the SHIFT process and contributing to the crafting of recommendations that address their concerns and interests in the best way possible. Frank then urged committee members to continue to participate with the understanding that there may be a way to shape the transition to meet the needs of various constituencies. He also encouraged the group to think of the concerns that have been addressed by various groups to be part of the discussion and not necessarily outright vetoes to the charge. Allen Knapp then added that the group had two options – to put their own bills forward and hammer it out in the legislature or to take advantage of the consensus process that VDH has initiated.

A participant stated that every group engaged in the process is making a sacrifice to participate in the SHIFT conversation. This member explained that, although there exist conflicts between economic rights, professional responsibilities, constitutional and legal aspects, and process considerations, all of which need to be recognized and addressed, the purpose of this process is to manage a change that is viewed as inevitable by many.

One committee member then asked for a clarification about the scope of the SHIFT process and about where the initial impetus for the process originated. Jim Bowles of VDH responded that

the charge is to form recommendations to maximize private sector participation to the greatest extent possible while protecting water supplies and public health. He noted that there is currently private participation statewide of about 30 percent and the intent is to increase this. He further explained that the decision to begin the transition process is the result of two driving forces. First, a meeting between stakeholders and Delegate Watson identified concerns about the idea that some of the work done by the VDH in the onsite septic program could be provided by the private sector. Second, a number of complaints about the VDH work product have led to increased buy-in from the highest levels of the VDH to form the SHIFT group to investigate the path toward greater private sector involvement. Together, he explained, these realizations were strengthened because other agencies are also making a shift towards increased private sector involvement, with work performed by licensed individuals rather than by agency staff.

A member of the group suggested that all committee members should disclose conflicts of interest and asked whether it would be possible to get an opinion from the Office of the Attorney General on this issue. Another member noted that conflict of interest is typically an issue related to personal financial interests.

The Virginia section of the American Institute of Professional Geologists has not taken a stand on the issues being considered by SHIFT but expressed that they want to be included in discussions on groundwater and geology due to their qualifications.

Kelly discussed a public comment that was submitted anonymously. She reminded the committee that it discussed this issue at the previous meeting, and some members had expressed the desire to receive all comments, whether or not anonymous, as long as SHIFT committee members themselves do not submit anonymous comments. Others had expressed the desire that no anonymous comments should be shared with the committee. Frank emphasized that IEN's role is not to keep any comments from reaching the Committee or to serve as a censor; rather, IEN prefers that members determine for themselves the worth of an anonymous comment. In this instance, per the committee's request, IEN did request that the anonymous commenters identify their affiliation, but they declined to do so. Kelly said she would continue to follow up with any anonymous commenters to ask them whether they would be willing to indicate their affiliation.

The VDH also discussed the backlog report that they sent out following the third meeting. After reviewing the data more carefully and hearing feedback from local health departments, they have found that much of the data is invalid due to both a programming error and the complexity of calculating backlogs. VDH will return to the group with an update on fixing these errors.

Larry Wallace shared with the committee that he planned to show a model of SERCAP's relief fund via email, which would provide context for developing a recommendation for the formation of a new onsite septic program relief fund.

Finally, one member highlighted the comment made by Mark Courtney about the roles of DPOR and VDH in oversight of work by OSEs. Mr. Courtney wrote in the NowComment document that "oversight of DPOR licensees – in terms of their performance of services that are controlled by other entities such as VDH – is not reserved solely to DPOR. DPOR's role in regulating professional standards of practice does not extend to interpreting or enforcing statutes, regulations, policies, or procedures under the purview of other agencies. In the case of licensed Onsite Sewage System Professionals (OSSPs), VDH is indeed authorized to provide oversight or to require continuing education in exercising its mandate to protect public health and groundwater supplies in the Commonwealth." The committee member believed strongly that this information should be highlighted, as it demonstrates clearly that it is VDH's responsibility to oversee OSE work product expectations and standards, and to manage complaints and incompetencies. In this view, VDH has not been willing to acknowledge this responsibility, and he was grateful for this clarification of roles.

Discussion on Recommendations

After reviewing the SHIFT process and discussing group updates, Frank transitioned the meeting into a discussion about the draft recommendations that emerged from the previous meeting. He noted that, whereas the last three meetings provided opportunities to explore the possibilities of increased private sector involvement and for fleshing out a range of ideas for recommendations, this meeting would focus on specific individual recommendations in greater depth.

In advance of the meeting, the IEN posted a "single text" packet containing the many draft recommendations from meeting three online to give participants the opportunity to comment before this discussion. The software used, NowComment, worked well for some committee members but presented challenges for others who found it too slow and difficult to navigate, or didn't receive the initial invitation. Over half the participants logged in and viewed the document, and five participants commented on it. The facilitators noted this and promised to investigate alternative means for sharing and allowing commenting on documents in the future. Each member was given a copy of this document, including the comments from NowComment, for reference during the discussion.

The facilitators asked the group to consider the following questions during the discussion: of the draft recommendations:

1. **Clarification**: Are there questions about what specific recommendations mean?
2. **Strengthening**: How can we strengthen specific recommendations to enable broader support?
3. **Relevance**: Is the language relevant and necessary for the recommendations?
4. **Narrowing**: Are there ideas that simply cannot work, or present too many challenges to be supported, or aren't significant enough to include?

The group began by discussing the charge and the categorized recommendations from the beginning of the document. After lunch, the facilitators jumped ahead to sections deserving greater attention. Committee members discussed the recommendations one by one and weighed in on whether any needed to be deleted or edited. A record of the point-by-point discussion is included in Appendix A. Also included, in Appendix B, is a subsequent effort by VDH to re-categorize the recommendations for better clarity. In this document, VDH attempts to identify issues that are outside the scope of SHIFT and issues that are not critical to discuss during the SHIFT work

Discussion Wrap-up

Kelly thanked the group for taking time to gather for the meeting. She shared that IEN will be working with VDH over the following weeks before the fifth meeting to hone the recommendations based on the group's discussion.

Public Comment

During the time allotted for public comment, a representative from the Virginia Well Water Association asked the group if the SHIFT process would apply to water well permits. The response from the group was that water wells permits are not off the table because 141.A includes water wells. However, the group thought that there would be very little change to well water permits because, although they are within the purview of the group to address, most of the changes addressed by SHIFT are in regards to septic systems and would not affect the current well system.

Meeting Wrap-up

Before ending the meeting, meeting participants provided the following feedback on the meeting space and organization:

- The lunch was good.
- The NowComment tool was useful for some but presented challenges for others.
- It would be helpful for the process to go more quickly.
- Focus groups could be helpful for drafting language on challenging topics.
- There is a desire to produce a final document that is short and concise.
- There is a desire to include an appendix in the final document to explain the basis for programs.
- It would be helpful to look at what current regulations call for in regards to specific issues.

The Committee members expressed that, if possible, they would like the following actions to occur before the next meeting:

- Larry will provide a link to show model of SERCAP's relief fund.
- Bob Marshall will share Pennsylvania's language related to disclosure.

The next SHIFT Advisory Committee meeting will take from 10 a.m. to 2 p.m. on October 31, 2013 at the Virginia Department of Forestry in Charlottesville, Virginia. The purpose of the next meeting will be to continue discussing and refining the draft recommendations assembled by the SHIFT Stakeholder Advisory Committee.

Stakeholder Advisory Committee Participants

Tony Bible – AOSE
Jim Bowles – VDH Office of Environmental Health Services
Alan Brewer – Loudoun County Government
Jimmy Bundick – Bundick Well and Pump CO., VA Well Water Assoc. VP.
Vincent Day – Sewage Handling and Disposal Advisory Committee
Charles Devine – Health Director of Lord Fairfax Health District
Ed Dunn – Virginia Environmental Health Association
John Ewing – Old Dominion Onsite, Inc.
Sandra Gentry – Manager of Gentry Septic Tank Service, Secretary of VOWRA
Scott Honaker – Environmental Health Manager of the Mt. Rogers Health District
Erik Johnston – Director of Government Affairs, Virginia Association of Counties
Dave Lentz – Regulatory Director at Infiltrator Systems Inc.
Bob Marshall – President of the VA Association of AOSEs, practicing AOSE
Curtis Moore – VOWRA Representative, AOSE
John Powell – Powell’s Plumbing, VOWRA BOD
Tim Reynolds – Reynolds-Clark Development
Bill Sledjeski – CPSS and an AOSE
Bill Timmins – Sewage Handling and Disposal Advisory Committee
Jeff Walker – President Elect of VAPSS
Larry Wallace – Virginia State Program Manager of SERCAP
Neil Williamson – Governmental Affairs Director at Charlottesville Area Assoc. of Realtors

Resource Members

Allen Knapp – VDH
Dwayne Roadcap – VDH
Mark Courtney – DPOR
Trisha Henshaw – DPOR

IEN Facilitation Team

Frank Dukes
Kelly Wilder
Hannah Morgan

Meeting Observers

David Tiller – OEHS
Cindy Hurt – Piedmont Environmental Council
Whitney Wright – Prince William Health District
Dean Richardson – Southside Health District

Meeting #4 Appendix I: Draft Recommendations

The following are ideas for recommendations developed to date.

Only a handful of these ideas were tested for consensus at the very end of the third meeting. Where this emerging agreement was expressed or tested, it is noted in the text.

It is expected that this document will undergo significant changes, deletions, and additions before it is completed by the end of November.

Key:

- *Committee comments*
- ~~Potential deletions~~
- Items for follow up
- **VDH guiding comments**

I. ROLES AND RESPONSIBILITIES

A. CHARGE 1A: 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, and which by the Private Sector? *The committee asked about the use of “must” and whether it means these services would be mandated. VDH said it was an accident in wording and could be taken to mean “should,” or the second part of the sentence could be dropped. Committee members alluded to the 10 essential services but VDH pointed out that those are not necessarily in code.*

1. SUBCHARGE 1A1: Identify the Department’s core functions and responsibilities in assessment, policy development, and quality assurance (see the 10 essential services for environmental public health).

- a. There is strong consensus that VDH should maintain a strong oversight role in the new onsite program. *No additional comments.*
- b. The VDH should include all duties not requiring a license. **No change. Some committee members were confused about this.**
- ~~i. A system of certification and recertification is needed. **Need more info, but probably would require legislation.**~~
- ii. VDH needs to provide stronger oversight of OSEs, including requiring continuing education requirements to ensure consistent application of services. **This is in DPOR’s area of authority. Many on the committee expressed agreement that VDH oversight of OSEs should be stronger. Continuing education requirements already exist – some suggested striking this recommendation.**
- c. VDH should manage onsite septic policy.

- i. VDH provide private sector with updated policy information, and improve its communication with the private sector. **Policy.** *The committee would like more specifics on how this would work – it was suggested that a working group could draft language for the next meeting.*
- d. VDH should draft and issue operating permits. **No change.** *This is already in the code.*
- e. VDH should maintain and manage records and data, ~~in the same manner as building inspection officials.~~ **Policy.** *This involves operations and maintenance and doesn't necessarily follow the building model. The question to ask is how it should be done in order to ask questions like which installers aren't doing their jobs properly, which AOSEs aren't consistent, etc. The committee would like to add that records should be accessible as well.*
- f. ~~VDH should conduct~~ inspections.
 - i. VDH inspectors need to be trained to understand location of systems (GPS, tank, well, footprint) as well as trained in how to record that data. **Policy.** *GPS and tracking is important but there are complications – VDH is still working on implementation, you need locality buy in, and people need to be trained. This issue is important but might be beyond the scope of the committee.*
 - ii. Inspections should ensure compliance with the permitted design, not just the minimum requirements. **Regulation/legislation.** *Is compliance tied to the regulations or the design? What if things change and the designer is OK with the changes? These substantial compliance issues need to be clarified with the building inspectors. The manufacturing sector would not be in favor of having to be at every inspection. Members raised questions about whether this is a necessary part of the shift or just an overall question for the program.*
 - iii. ~~VDH should be able to inspect any site at any time throughout the process.~~ **No change.**
 - iv. VDH should require periodic inspection of *all* systems (not just alternative systems). [3] **Legislation.** *Committee members discussed inspections at point of sale – could be a problem from the perspective of realtors because it's already covered in a home inspection/real estate contract. However, although it could increase costs, it would be good for public health. This issue isn't necessarily germane to the shift, unless it's asking whether VDH or the private sector should do it.*
 - v. For VDH inspections prior to installation (i.e., Level 2 Inspections), the following are options:
 - (a) ~~VDH should conduct level 2 inspections 100% of the time.~~ [3] **Policy.** *Cost will likely rise, and the timing issues of performing dual inspections would have an economic impact. Level 2s are only feasible prior to the issuance of a permit – the committee would like to better understand how localities that do a lot of level 2s manage it*

- so they could consider whether it's feasible statewide. VDH is already empowered to do these.*
- (b) VDH should conduct level 2 inspections when it deems necessary – and on a sliding scale of up to 100% of the time in areas where soils present high risks. [3] **Policy.** *This should be under agency discretion – not just when soils are high risk.*
 - (c) ~~VDH should conduct level 2 inspections when requested by the designer.~~ *There is consensus that this should continue to be the case (courtesy reviews). The idea of charging a fee was brought up.*
 - (1) VDH should establish a mechanism by which designer may request more integration with VDH for review and guidance with high-risk sites. [2] **Need more information.** *This could be word-smithed by a smaller group.*
 - (2) VDH should provide technology assistance (e.g., field reviews). **Policy.** *This would fit with the above discussion.*
 - (d) VDH should provide level 2 inspections when required and funded by the county. [4] **Need more information/explanation.** *There was a suggestion to change the wording to be “upon the request and funding of the county, not exclusive of the above items.” This should only happen if the county is willing to pay for it – it could be difficult to get counties on board.*
- vi. For VDH inspections after installation (i.e., final inspections), VDH should develop a dual inspection system that would operate as follows: [12] *The committee clarified that this relates to final inspections, not pre-construction like the previous item. The committee generally agreed that this part of the system should be kept as is.*
- (a) The VDH role should be to inspect the installation to ensure that it meets the design in the following ways: a) it is located where specified in the design; b) it meets the sizing specifications; c) it complies in all ways with the regulations. **Policy.**
 - (b) The VDH final inspection should be within 48 hours of notice. **Policy.**
 - (c) If VDH does not conduct 100% inspections, then all installers should be required to report the installation and VDH would have option to conduct an onsite final inspection: **Regulation/Legislation.**
 - (1) At random (to ensure installer ready at any time) [1] **Policy.**
 - (2) Risk-based – based on history, soil, lot size, proximity to water (public water and wells), contractor history. [5] **Policy.**
- g. Should VDH provide design? Options for consideration are: *VDH is obligated to accept an application from anyone but not necessarily do all the work for them – they would be reluctant to make a policy statement that they would never do any design without legislation. Code does not mandate design role but the budget bill suggests it given references to “bare applications.” When VDH is doing design, they need to be licensed. This section highlights need for further discussion on conflict of interest.*

- ~~i. VDH should never design systems, standard or alternative. **Legislation.** *It's unlikely this would work for VDH.*~~
 - ii. VDH should be able to design alternative systems in repair/emergency situations. **Policy.**
 - iii. Where there is only one private provider (i.e., no choice), or where the cost for systems is above the regional average, then VDH may do the design. [6] **Not sure.**
 - iv. Larger, more complex jobs need to go to the private sector. [3] **Policy.**
 - v. In areas where there is limited development (i.e., mostly repair designs), maybe the VDH should be allowed to do designs. **Not sure.** *Needs additional discussion.*
 - ~~h. VDH should provide for homeowner education.~~
 - i. Upon sale of a property, VDH should require both an inspection and education via a handout for homeowners. **Policy (but may need legislation for resources).** One method of enforcing this requirement would be to initiate a renewable operation permit. [11] **Legislation.**
 - ii. VDH should develop and expand an education program for realtors (e.g., the Loudoun County model), community groups and homeowners. [1] **Need more info; what is the "Loudoun County Model"?**
 - (a) VDH should periodically mail information to homeowners (e.g., property tax mailing). [2] **Policy, but a resource issue.**
2. **SUBCHARGE 1A2: Identify how the Department can assure quality and timely direct services are provided to the public and local governments, especially given regional differences.** *There's a concern that VDH applications get processed faster than private sector ones – timely services is how the private sector competes. Suggestions include increasing fees or contributing more funding to VDH for permit review and/or prioritizing review of work. The committee would like further discussion on what constitutes "timely."*
 - ~~a. Third party inspections should be an option in special circumstances when the need to protect public or environmental health is urgent and when the VDH is unavailable to perform inspection. [4] **Need more info; may need no change.**~~
 3. **SUBCHARGE 1A3: Identify the Department's resource needs to perform the core functions that are necessary to protect public health and groundwater supplies.**
 - a. If the VDH does provide 100% final inspections, then it will need to ensure it is adequately staffed for this role. [7] **Legislation (budget) may be needed.** *This should be revisited in the context of fees.*
 4. **SUBCHARGE 1A4: Identify ways to keep a "checks and balances" system in place.**
 - a. There is strong consensus that all site evaluation and design work must be done under licensure – whether by private providers or state employees. [10] **No change in law. Follow-up discussion about work product expectations will be developed.** *Further discussion on work product is needed. VDH is committed to one expectation so that public and private work is comparable – this needs a break out session that could bring recommendations back to VDH, but nobody volunteered at this time. An idea was brought up to have Bill*

attend the next SHADAC meeting. Another idea was to have GMP 126D apply to everyone – VDH responded that they could not make this policy change easily.

- i. In cases where there are people in training, everybody who is doing site evaluation and design should be doing it under auspices direct supervision of a licensed individual. **No change.**
 - ii. There is still clarification needed on whether VDH staff reviewing designs also need a license. One possibility is that just those doing the design need a license; another possibility is that a designer should expect his work to be reviewed by a similarly qualified person (though that's not required by law). **Need more info.** *A suggestion was offered to reword to clarify but maintain desire for more standardization of licensure: a license is needed for site evaluation and design (including level 2) but not for paper review. We still need revised language on this.*
- b. The designer should be required to inspect the installation to ensure that it is installed correctly and according to design. [2] **No change.** *It was suggested to add "the designer or someone he or she designates." This could also go to a small group that could work on the language – Jim Bowles and Sandra Gentry will work on this in the meantime.*
 - c. The VDH should issue an operating permit only after designer has signed off on the inspection to certify that the installation is correct. [2] **No change.** *No change needed – keep in recommendations.*
 - d. For real estate transactions involving systems installed over five years ago, the state should mandate inspection by a licensed septic professional. [1] **Legislation.** *Need further discussion – no agreement reached.*
 - e. Until the shift to maximal privatization is complete, VDH should be required to disclose at the time of a permit application: *This section is significant and should be kept in the document. GMP 128 refers to language the department can use related to waivers and explaining to applicant what their limitations are. IEN will use the Pennsylvania language to redraft this recommendation. More discussion is needed.*
 - i. ~~The VDH service limitations, i.e. length of time, number of site visits evaluations, and design capabilities.~~ **Policy.**
 - ii. The applicant's options for obtaining service from a private service provider. **Policy.** *Suggestion: "For the foreseeable future, VDH should be required to disclose at the time of a permit application the applicant's option for obtaining service from a private sector provider."*
 - iii. Other potential conflicts of interest, limitations, and options. [5] **Policy.** *It needs to be specified what COI means here.*
 - f. Licensed OSE's should be required to report problems with onsite systems to the local VDH. (Note: this is already required but may not always occur.) [5] *This is already the case but the language should be kept to ensure it's maintained.*

- g. ~~Each party in the process of developing and installing the onsite septic system should assume liability for his part of the process.~~ **Liability is difficult to address; for the most part, it is up to the judicial system to determine liability. Legislation could address some liability issues.** *This is covered in other laws and beyond the scope of this process. A recommendation came up to require a license number on completion statements – VDH has this authority but has to approve a properly-designed system even if done by someone without a license.*
- i. The designer should assume liability for the design and ensuring that the system is installed per the design. [NB: This would require a legislative change by the General Assembly].
 - ii. The owner (homebuilder or owner agent) should assume full liability for the system for the length of the warranty (usually one year).
 - iii. The VDH should be liable only for its part in ensuring that the system meets regulations.
 - iv. If the VDH performs risk-based final inspections, then different levels of liability would ensue.
 - (a) Sites that receive final VDH inspections would have lower liability and those that do not receive final VDH inspections would have higher liability. The higher liability would be enforced by requiring a bond to accompany licensure (similar to the homebuilding licensure model). [2]
 - h. The professional and ethical code of conduct for licensed OSE's need to be defined and/or clarified. *This requires more discussion.*
 - i. DPOR staff should work with VDH to ensure proper reporting of conflict of interest. [5]
 - ii. ~~Installers should be required to disclose if they are benefitting from the sale of a component.~~ *This is already required.*
 - iii. The complaint system should be clarified. *This is already required, should be moved into the repair section, and needs further conversation.*
 - (a) Would complaints still be handled by the VDH, or taken up by licensure board for the private sector? **Need more info. Complaints about licensed occupations are a DPOR issue. Complaints about sewage facilities (or lack thereof) are a VDH issue.**
 - (b) VDH should still check on complaints, but refer work to private sector. **Need more info.** *This should be moved to the repair section.*
 - i. Regulations should be uniform across the state regardless of soil conditions, i.e. the regional EHS could eliminate district-to-district inconsistencies. *This is an important issue and requires better communication between state and localities. It was suggested that a subgroup gets together to discuss, including figuring out a technical system for standardized online permit system.*
- 5. SUBCHARGE 1A5: Identify how VDH staff can maintain expertise in the program.**
- a. VDH inspectors should become certified or licensed. **Need more info.**

- b. A training should be developed to provide this certification or licensure to VDH staff. North Carolina could serve as a model for this effort. **Need more info.**
 - c. VDH should review and update its internal Quality Assurance/Quality Control policy. [2] **Policy.**
 - d. VDH staff and private sector providers need to be trained to use and gather GPS data for onsite septic sites (the standard used should be 10 feet). **Policy.**
 - i. If a variance is needed, then either the VDH/OSEs/PEs may pursue the design. **Need more info.**
 - e. EHS staff should be required to spend a certain number of field days with installers/OSEs/operators to keep their onsite skills sharp. **Policy.**
 - i. One option is to develop an extension training system.
- 6. SUBCHARGE 1A6: Identify the elements or conditions that create choice and competition for services.**
- a. VDH should maintain a roster of OSEs. [3] **Policy.**
 - i. Develop an electronic bidding forum to ensure competition and to provide customers with choice. [3] **Legislation.**
 - ii. In low-service areas, develop a website where the private sector has the first opportunity to bid on a project before the homeowner may use VDH services.
 - iii. In exchange for joining the roster, the OSE must agree to perform “X” hours of pro bono work. [6] **Legislation.**
 - (a) In general, some variation of “pro bono” work has high levels of support.
 - iv. Charge a fee for the listing, to help subsidize low-income residents. [5] **Legislation.**
 - (a) There is general support for the idea that fees should go to support repairs for those who can’t afford them.
- 7. SUBCHARGE 1A7: Evaluate options for responding to repair applications.**
- a. VDH should develop a multidisciplinary district or regional “response team” to respond to difficult situations. [5] **Need more info.**
 - b. VDH’s highest priority should be repairs. In order to do site designs in cases of public health emergencies (e.g., failed systems, repairs, discovery of straight discharge to surface waters) [6]:
 - i. VDH should establish a referral service for the homeowner with information on private sector providers (see section 1B). **Need more info.**
 - ii. Homeowners that meet a “means-test” (income threshold) should have access to: **Legislation.**
 - (a) A fund to enable them to pay a private provider, or **Legislation.**
 - (b) VDH design assistance, when a standard design is appropriate. When a standard design is not appropriate, the VDH will deny the application and refer the homeowner to a OSE or PE for design of an alternative system. **Policy.**

- B. CHARGE 1B: What core functions or tasks can be accomplished by the private sector? Identify the strategies and methods for achieving greater private sector involvement.**
- 1. SUBCHARGE 1B1: Investigate ways to encourage or increase private sector input in rural areas.**
 - a. A public subsidy is appropriate in under-served areas until there is sufficient competition within the private sector. (Providers could be public or private in this model, until competition develops in the private sector.) [2] **Legislation.**
 - 2. SUBCHARGE 1B2: Investigate ways to encourage or increase private sector input for work with repairs.**
 - a. Arrange for small business development support through the local economic development offices and state Department of Small Business Assistance. [1]
 - b. Eliminate some formal qualifications (e.g., a degree) for certification, to lower barriers to becoming a private provider. **Regulation (DPOR).**
 - c. Incentives must be created to encourage preferential use of the private sector, to encourage the private sector to expand coverage, and to foster an organic shift to using the private sector. [5]
 - i. Private providers should be encouraged or required to register with counties where they are willing to provide services. **Legislation.**
 - ii. VDH should make this registration data on PE and OSE providers at the county level available to the private sector to incentivize providers to expand their services into low-service counties. **Need more info.**
 - d. Begin the shift by focusing on privatizing work in priority areas, particularly: [6] **Policy.**
 - i. Onsite septic work for subdivision development.
 - ii. Certification letter preparation.
 - iii. Voluntary upgrades.
 - e. Find and share best practices for promoting a viable private sector, from regions where the shift has occurred, to inform areas where the shift has not yet occurred. [3]

II. TRANSITION PROCESS, INCLUDING REGULATORY AND LEGISLATIVE NEEDS

- A. CHARGE 2A: Identify or recommend the means for an orderly transition.**
- 1. SUBCHARGE 2A1: Identify or recommend tactics that may be implemented relatively easily and quickly.**
 - 2. SUBCHARGE 2A2: Evaluate regional differences, barriers, and triggers that could effect change.**
 - a. Establish thresholds for when VDH may no longer do new construction work. [2] **Need more info.**
 - b. Determine the schedule of the shift by region, to address district and locality needs. Develop a schedule with target dates by which VDH would increase its fees, and a schedule for the fee increases. **Need more info.**
 - 3. SUBCHARGE 2A3: Identify or recommend options that appear promising or feasible but require additional study or input.**

4. **SUBCHARGE 2A4: Identify or recommend ideas that require regulatory action by the Board of Health.**
5. **SUBCHARGE 2A5: Identify or recommend legislative changes.**
 - a. A statutory waiver would be needed to allow for lifetime repairs of septic systems, regardless of the soil site conditions, and with certain conditions attached to property transfers.

B. CHARGE 2B: How should change be accomplished to minimize unintended consequences and negative impacts?

1. **SUBCHARGE 2B1: Identify challenges for change and mitigation strategies.**
 - a. Give advance notice to everyone, especially the private sector, of phased sunset transition dates, to prepare the private sector to take on additional work as VDH reduces its services and to ensure continuity in areas that may currently be underserved by the private sector. [5] **Policy.**
2. **SUBCHARGE 2B2: Recommend or create a reasonable timeline.**
 - a. Reduce VDH capacity gradually to allow continuity and sustainability while incentivizing the shift to the private sector. [2] A longer lead time will allow a supply of providers to develop. [4] **Need more info.**
 - i. Increase VDH fees gradually on a schedule to transition VDH out of providing those services that are to be provided by the private sector. [1] This could involve establishing specific targets (e.g., >20%, 30%, 40%). **Legislation.**
 - ii. Transition services on a schedule: [4]. The first transition would be soil evaluation, [1] then the second transition would be design services. [1] **Need more info.**

C. CHARGE 2C: Describe other strategies, data, information, or detail as developed through or deemed necessary by the SHIFT stakeholder process.

1. VDH should develop a full inventory and map of all systems in the state.
 - a. All information provided by private sector should be submitted to VDH electronically. **Policy.**
 - b. There is general agreement that permits should be submitted electronically, which would make both the submission process and the review easier. Online applications might also make it easier for the applicant to know immediately if the application meets the regulations, by virtue of automatized features and parameters. More needs to be discussed about the role of technology. **This is a long-term project.**

III. FINANCIAL AND ECONOMIC ISSUES

A. CHARGE 3A: Identify fiscal impacts to the Department and local governments related to recommended changes.

1. There is general agreement that resources are needed to facilitate the transition and program funding. **Need more info.**

- B. CHARGE 3B: Identify the economic impact to those who receive direct services (i.e., private citizens, local governments, septic contractors, and other stakeholders).**
- 1. SUBCHARGE 3B1: Describe anticipated or possible financial impacts to low and moderate income property owners with additional privatization of direct services.**
 - a. There will be financial impacts when owners have to use the private sector, and this will pose a problem of access in certain areas, at least in the short term.
 - 2. SUBCHARGE 3B2: Describe strategies to reduce any possible impact to low or moderate income owners.**
 - a. Charge for repairs for high income to subsidize low income. [5] **Legislation.** *This is of concern because the state wants to incentivize people repairing their systems. The health department can currently fine people who will not repair their systems. But subsidized repairs still cost public dollars and take business away from the private sector – there’s a sentiment that although there’s a public health benefit, some should be obligated to pay.*
 - 3. SUBCHARGE 3B3: Address supply and demand to ensure reasonably priced services can be provided as housing market conditions change or improve.**
 - 4. SUBCHARGE 3B4: Describe how changes in the housing market could affect the demand for services and the ability to provide timely services.**
 - a. Need to address contingency that continued depressed building rates might mean no increase in work for OSEs despite discontinued VDH involvement. **Need more info.**
 - 5. SUBCHARGE 3B5: Discuss ideas to reduce financial impacts from bad outcomes, such as the early failure of an onsite sewage system.**
- C. CHARGE 3C: Identify funding needed to implement SHIFT stakeholder group recommendations.**
- 1. SUBCHARGE 3C1: Identify ways to improve or change the Department’s fee structure to help increase privatization of direct services.**
 - a. VDH will need to raise fees to make up for the loss of bare applications. [1] **Legislation.**
 - b. Options to support new VDH inspection staff and timely inspections turnaround:
 - i. VDH should charge one inspection fee at issuance of operating permit. **Legislation**
 - ii. VDH should charge separate fees for each function (reviews and inspections). [2] **Legislation.**
 - iii. VDH should charge one upfront fee at issuance of (construction) permit. **Need more info.**
 - c. Question: Does a reduced VDH role mean reduced fees [1] or reduced agency liability? [1]
 - d. Increase discrepancy between public and private to incentivize private sector. **Legislation**

- e. Create board of equalization to equalize fees for services – VDH charge same basic rate as private sector in choice model. **Legislation.**
 - f. Do away with special fees and return to mandated fee structure, then restore general funds. **Legislation.**
2. **SUBCHARGE 3C2: Identify short and long-term funding needs to sustain the Department’s implementation of core functions.**
 - a. VDH staff working on septic/water funding – who are involved in interagency cooperation – should identify existing and potential funding sources and effectively act as ombudsmen within and outside of program. **Need more info.**
 - b. VDH should retain any savings from shift for parts of state that need O&M help. **Need more info**
 3. **SUBCHARGE 3C3: 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.**
 - i. New construction should be completely privatized – septic is small portion of overall construction cost and less of an argument for using public funds. **Need more info.**
 4. **SUBCHARGE 3C4: Investigate the possibility of creating a fund or expanding the betterment loan program.**
 - i. Homeowner who can’t afford a system should have access to assistance fund. [4] **Legislation.**
 - (a) Model after SERCAP’s relief fund
 - ii. Indemnification fund
 - (a) Allow private sector to access indemnification fund [2] **Legislation.**
The intent is to make the indemnification fund available to low-income – this needs rewording for clarification.
 - (b) Transfer indemnification fund to septic relief fund. **Legislation.**
 - iii. Portion of fees goes to repair fund. **Legislation.**
 - iv. Insurance pool/backstop “vaccine” model. **Legislation/need more info.**
 5. **SUBCHARGE 3C5: Investigate the possibility of supporting the Department with greater general fund revenue.**

IV. OTHER

- A. **CHARGE 4A: Analysis should include the E.L. Hamm study from 2006 and the HB2185 study. Are these studies still reflective of stakeholder opinions and views?**

Meeting #4 Appendix II: Draft Recommendations – Reorganized by VDH

The following are ideas for recommendations developed to date that have been reorganized by VDH staff for better clarity.

VDH Continuing Responsibilities

I. General Programmatic Responsibilities

There is strong consensus that VDH should maintain a strong oversight role in the new onsite program. *No additional comments.*

The VDH should include all duties not requiring a license. **No change.** *Some committee members were confused about this.*

VDH needs to provide stronger oversight of OSEs, ~~including requiring continuing education requirements~~ to ensure consistent application of services. **This is DPOR's area of authority.** *Many on the committee expressed agreement that VDH oversight of OSEs should be stronger. Continuing education requirements exist – some suggested striking this recommendation.*

VDH should manage onsite septic policy.

VDH provide private sector with updated policy information, and improve its communication with the private sector. **Policy.** *The committee would like more specifics on how this would work – it was suggested that a working group could draft language for the next meeting.*

II. Review of Private Sector Work

~~VDH should conduct level 2 inspections when requested by designer.~~ *There is consensus this should continue to be the case (courtesy reviews). The idea of charging a fee was brought up.*

- VDH should provide technology assistance (e.g., field reviews). **Policy.** *This would fit with the above discussion.*

VDH should conduct level 2 inspections when it deems necessary – and on a sliding scale of up to 100% of the time in areas where soils present high risks. [3] **Policy.** *This should be under agency discretion – not just when soils are high risk*

VDH should draft and issue operating permits. **No change.** *This is already in the code.*

VDH should maintain and manage records and data, ~~in the same manner as building inspection officials.~~ **Policy.** *This involves operations and maintenance and doesn't necessarily follow the building model. The question to ask is how it should be done in order to ask questions like which*

installers aren't doing their jobs properly, which AOSEs aren't consistent, etc. The committee would like to add that records should be accessible as well.

Inspections should ensure compliance with the permitted design, not just the minimum requirements. **Regulation/legislation.** *Is compliance tied to the regulations or the design? What if things change and the designer is OK with the changes? These substantial compliance issues need to be clarified with the building inspectors. The manufacturing sector would not be in favor of having to be at every inspection. Members raised questions about whether this is a necessary part of the shift or just an overall question for the program.*

~~VDH should be able to inspect any site at any time throughout the process.~~ **No change.**

For VDH inspections prior to installation (i.e., Level 2 Inspections), the following are options:

- ~~VDH should conduct level 2 inspections 100% of the time.~~ [3] **Policy.** *Cost will likely rise, and the timing issues of performing dual inspections would have an economic impact. Level 2s are only feasible prior to the issuance of a permit – the committee would like to better understand how localities that do a lot of level 2s manage it so they could consider whether it's feasible statewide. VDH is already empowered to do these.*
- VDH should conduct level 2 inspections when it deems necessary – and on a sliding scale of up to 100% of the time in areas where soils present high risks. [3] **Policy.** *This should be under agency discretion – not just when soils are high risk.*

VDH should provide level 2 inspections when required and funded by the county. [4] **Need more information/explanation.** *There was a suggestion to change the wording to be “upon the request and funding of the county, not exclusive of the above items.” This should only happen if the county is willing to pay for it – it could be difficult to get counties on board.*

For VDH inspections after installation (i.e., final inspections), VDH should develop a dual inspection system that would operate as follows: [12] *The committee clarified that this relates to final inspections, not pre-construction like the previous item. The committee generally agreed that this part of the system should be kept as is.*

- The VDH role should be to inspect the installation to ensure that it meets the design in the following ways: a) it is located where specified in the design; b) it meets the sizing specifications; c) it complies in all ways with the regulations. **Policy.**
- The VDH final inspection should be within 48 hours of notice. **Policy.**
- If VDH does not conduct 100% inspections, then all installers should be required to report the installation and VDH would have option to conduct an onsite final inspection: **Regulation/Legislation.**
 - At random (to ensure installer ready at any time) [1] **Policy.**
 - Risk-based – based on history, soil, lot size, proximity to water (public water and wells), contractor history. [5] **Policy.**

Should VDH provide design? Options for consideration are: *VDH is obligated to accept an application from anyone but not necessarily do all the work for them – they would be reluctant*

to make a policy statement that they would never do any design without legislation. Code does not mandate design role but the budget bill suggests it given references to “bare applications.” When VDH is doing design, they need to be licensed. [This section highlights need for further discussion on conflict of interest.](#)

- ~~VDH should never design systems, standard or alternative. **Legislation.** *It’s unlikely this would work for VDH.*~~
- VDH should be able to design alternative systems in repair/emergency situations. **Policy.**
- Where there is only one private provider (i.e., no choice), or where the cost for systems is above the regional average, then VDH may do the design. [6] **Not sure.**
- Larger, more complex jobs need to go to the private sector. [3] **Policy.**
- In areas where there is limited development (i.e., mostly repair designs), maybe the VDH should be allowed to do designs. **Not sure.** *Needs additional discussion.*

If the VDH does provide 100% final inspections, then it will need to ensure it is adequately staffed for this role. [7] **Legislation (budget) may be needed.** *This should be revisited in the context of fees.*

The designer should be required to inspect the installation to ensure that it is installed correctly and according to design. [2] **No change.** *It was suggested to add “the designer or someone he or she designates.” [This could also go to a small group that could work on the language – Jim Bowles and Sandra Gentry will work on this in the meantime.](#)*

The VDH should issue an operating permit only after designer has signed off on the inspection to certify that the installation is correct. [2] **No change.** *No change needed – keep in.*

Building Private Sector Capacity

VDH should maintain a roster of OSEs. [3] **Policy.**

- Develop an electronic bidding forum to ensure competition and to provide customers with choice. [3] **Legislation.**
- In low-service areas, develop a website where the private sector has the first opportunity to bid on a project before the homeowner may use VDH services.
- In exchange for joining the roster, the OSE must agree to perform “X” hours of pro bono work. [6] **Legislation.**
 - In general, some variation of “pro bono” work has high levels of support.
- Charge a fee for the listing, to help subsidize low-income residents. [5] **Legislation.**
 - There is general support for the idea that fees should go to support repairs for those who can’t afford them.

VDH should establish a referral service for the homeowner with information on private sector providers (see section 1B). **Need more info.**

A public subsidy is appropriate in under-served areas until there is sufficient competition within the private sector. (Providers could be public or private in this model, until competition develops in the private sector.) [2] **Legislation.**

Arrange for small business development support through the local economic development offices and state Department of Small Business Assistance. [1]

Eliminate some formal qualifications (e.g., a degree) for certification, to lower barriers to becoming a private provider. **Regulation (DPOR).**

Incentives must be created to encourage preferential use of the private sector, to encourage the private sector to expand coverage, and to foster an organic shift to using the private sector. [5]

- Private providers should be encouraged or required to register with counties where they are willing to provide services. **Legislation.**
- VDH should make this registration data on PE and OSE providers at the county level available to the private sector to incentivize providers to expand their services into low-service counties. **Need more info.**

Begin the shift by focusing on privatizing work in priority areas, particularly: [6] **Policy.**

- Onsite septic work for subdivision development.
- Certification letter preparation.
- Voluntary upgrades.

Find and share best practices for promoting a viable private sector, from regions where the shift has occurred, to inform areas where the shift has not yet occurred. [3]

Establish thresholds for when VDH may not do new construction work. [2] **Need more info.**

Determine the schedule of the shift by region, to address district and locality needs.

Develop a schedule with target dates by which VDH would increase its fees, and a schedule for the fee increases. **Need more info.**

Increase discrepancy between public and private [fees] to incentivize private sector. **Legislation**

Give advance notice to everyone, especially the private sector, of phased sunset transition dates, to prepare the private sector to take on additional work as VDH reduces its services and to ensure continuity in areas that may currently be underserved by the private sector. [5] **Policy.**

Reduce VDH capacity gradually to allow continuity and sustainability while incentivizing the shift to the private sector. [2] A longer lead time will allow a supply of providers to develop. [4] **Need more info.**

- Increase VDH fees gradually on a schedule to transition VDH out of providing those services that are to be provided by the private sector. [1] This could involve establishing specific targets (e.g., >20%, 30%, 40%). **Legislation.**
- Transition services on a schedule: [4]. The first transition would be soil evaluation, [1] then the second transition would be design services. [1] **Need more info.**

Addressing Cost/Economic Issues

There is general agreement that resources are needed to facilitate the transition and program funding. **Need more info.**

VDH will need to raise fees to make up for the loss of bare applications. [1] **Legislation.**

There will be financial impacts when owners have to use the private sector, and this will pose a problem of access in certain areas, at least in the short term.

VDH should be able to design alternative systems in repair/emergency situations. **Policy.** (Also listed under VDH Continuing Responsibilities)

Where there is only one private provider (i.e., no choice), or where the cost for systems is above the regional average, then VDH may do the design. [6] **Not sure.**

VDH should maintain a roster of OSEs. [3] **Policy.**

- Develop an electronic bidding forum to ensure competition and to provide customers with choice. [3] **Legislation.**
- In low-service areas, develop a website where the private sector has the first opportunity to bid on a project before the homeowner may use VDH services.
- In exchange for joining the roster, the OSE must agree to perform “X” hours of pro bono work. [6] **Legislation.**
 - In general, some variation of “pro bono” work has high levels of support.
- Charge a fee for the listing, to help subsidize low-income residents. [5] **Legislation.**
 - There is general support for the idea that fees should go to support repairs for those who can’t afford them.

Homeowners that meet a “means-test” (income threshold) should have access to: **Legislation.**

- A fund to enable them to pay a private provider, or **Legislation.**
- VDH design assistance, when a standard design is appropriate. When a standard design is not appropriate, the VDH will deny the application and refer the homeowner to a OSE or PE for design of an alternative system. **Policy.**

Charge for repairs for high income to subsidize low income. [5] **Legislation.** *This is of concern because the state wants to incentivize people repairing their systems. The health department can currently fine people who will not repair their systems. But subsidized repairs still cost public*

dollars and take business away from the private sector – there's a sentiment that although there's a public health benefit, some should be obligated to pay.

Options to support new VDH inspection staff and timely inspections turnaround:

- VDH should charge one inspection fee at issuance of operating permit. **Legislation**
 - VDH should charge separate fees for each function (reviews and inspections). [2] **Legislation.**
 - VDH should charge one upfront fee at issuance of (construction) permit. **Need more info.**

Question: Does a reduced VDH role mean reduced fees [1] or reduced agency liability? [1]

Increase discrepancy between public and private to incentivize private sector. **Legislation**

Create board of equalization to equalize fees for services – VDH charge same basic rate as private sector in choice model. **Legislation.**

Do away with special fees, return to mandated fee structure, restore general funds. **Legislation.**

VDH staff working on septic/water funding – who are involved in interagency cooperation – should identify existing and potential funding sources and effectively act as ombudsmen within and outside of program. **Need more info.**

VDH should retain any savings from shift for parts of state that need O&M help. **Need more info**

Homeowner who can't afford a system should have access to assistance fund. [4] **Legislation.**

- Model after SERCAP's relief fund
- Indemnification fund
 - Allow private sector to access indemnification fund [2] **Legislation. *The intent is to make the indemnification fund available to low-income – this needs rewording for clarification.***
 - Transfer indemnification fund to septic relief fund. **Legislation.**
- Portion of fees goes to repair fund. **Legislation.**
- Insurance pool/backstop “vaccine” model. **Legislation/need more info.**

Ideas that need consideration but are not necessary for SHIFT

VDH inspectors need to be trained to understand location of systems (GPS, tank, well, footprint) as well as trained in how to record that data. **Policy. *GPS and tracking is important but there are complications – VDH is still working on implementation, you need locality buy in, and people need to be trained. This issue is important but might be beyond the scope of the committee.***

VDH should require periodic inspection of *all* systems (not just alternative systems). [3] **Legislation.** *Committee members discussed inspections at point of sale – could be a problem from the perspective of realtors because it's already covered in a home inspection/real estate contract. However, although it could increase costs, it would be good for public health. This issue isn't necessarily germane to the shift, unless it's asking whether VDH or the private sector should do it.*

VDH should establish a mechanism by which designer may request more integration with VDH for review and guidance with high-risk sites. [2] **Need more information.** *This could be word-smithed by a smaller group.*

VDH should provide technology assistance (e.g., field reviews). **Policy.** *This would fit with the above discussion.*

~~VDH should provide for homeowner education:~~

- Upon sale of a property, VDH should require both an inspection and education via a handout for homeowners. **Policy (but may need legislation for resources).** One method of enforcing this requirement would be to initiate a renewable operation permit. [11] **Legislation.**
- VDH should develop and expand an education program for realtors (e.g., the Loudoun County model), community groups and homeowners. [1] **Need more info; what is the "Loudoun County Model"?**
- VDH should periodically mail information to homeowners (e.g., property tax mailing). [2] **Policy, but a resource issue.**

~~Third party inspections should be an option in special circumstances when the need to protect public or environmental health is urgent and when the VDH is unavailable to perform inspection. [4] **Need more info; may need no change.**~~

There is strong consensus that all site evaluation and design work must be done under licensure – whether by private providers or state employees. [10] **No change in law. Follow-up discussion about work product expectations will be developed.** *Further discussion on work product is needed. VDH is committed to one expectation so that public and private work is comparable – this needs a break out session that could bring recommendations back to VDH, but nobody volunteered at this time. An idea was brought up to have Bill attend the next SHADAC meeting. Another idea was to have GMP 126D apply to everyone – VDH responded that they could not make this policy change easily.*

In cases where there are people in training, everybody who is doing site evaluation and design should be doing it under auspices direct supervision of a licensed individual. **No change.**

There is still clarification needed on whether VDH staff reviewing designs also need a license. One possibility is that just those doing the design need a license; another possibility is that a designer should expect his work to be reviewed by a similarly qualified person (though that's not required by law). **Need more info.** *A suggestion was offered to reword to clarify but*

maintain desire for more standardization of licensure: a license is needed for site evaluation and design (including level 2) but not for paper review. We still need revised language on this.

For real estate transactions involving systems installed over five years ago, the state should mandate inspection by a licensed septic professional. [1] **Legislation.** *Need further discussion – no agreement reached.*

Until the shift to maximal privatization is complete, VDH should be required to disclose at the time of a permit application: *This section is significant and should be kept in the document. GMP 128 refers to language the department can use related to waivers and explaining to applicant what their limitations are. IEN will use the Pennsylvania language to redraft this recommendation. More discussion is needed.*

- ~~The VDH service limitations, i.e. length of time, number of site visits evaluations, and design capabilities.~~ **Policy.**
- The applicant's options for obtaining service from private service provider. **Policy.** *Suggestion: "For the foreseeable future, VDH should be required to disclose at time of permit application applicant's option for obtaining service from private sector provider."*
- Other potential conflicts of interest, limitations, and options. [5] **Policy.** *It needs to be specified what COI means here.*

Licensed OSE's should be required to report problems with onsite systems to the local VDH. (Note: this is already required but may not always occur.) [5] *This is already the case but the language should be kept to ensure it's maintained.*

The professional and ethical code of conduct for licensed OSE's need to be defined and/or clarified. *This requires more discussion.*

- DPOR staff should work with VDH to ensure proper reporting of conflict of interest. [5]
 - ~~Installers should be required to disclose if they are benefitting from the sale of a component.~~ *This is already required.*
- The complaint system should be clarified. *This is already required, should be moved into the repair section, and needs further conversation.*
 - Would complaints still be handled by the VDH, or taken up by licensure board for the private sector? **Need more info.** **Complaints about licensed occupations are a DPOR issue.** **Complaints about sewage facilities (or lack thereof) are VDH issue.**

Regulations should be uniform across state regardless of soil conditions, i.e. the regional EHS could eliminate district-to-district inconsistencies. *This is an important issue and requires better communication between state and localities. It was suggested that a subgroup gets together to discuss, including figuring out technical system for standardized online permit system.*

VDH inspectors should become certified or licensed. **Need more info.**

- A training should be developed to provide this certification or licensure to VDH staff. North Carolina could serve as a model for this effort. **Need more info.**

VDH should review and update its internal Quality Assurance/Quality Control policy. [2] **Policy.**

VDH staff and private sector providers need to be trained to use and gather GPS data for onsite septic sites (the standard used should be 10 feet). **Policy.**

If a variance is needed, then either the VDH/OSEs/PEs may pursue the design. **Need more info.**

EHS staff should be required to spend a certain number of field days with installers/OSEs/operators to keep their onsite skills sharp. **Policy.**

- One option is to develop an extension training system.

VDH should develop a multidisciplinary district or regional “response team” to respond to difficult situations. [5] **Need more info.**

VDH’s highest priority should be repairs. In order to do site designs in cases of public health emergencies (e.g., failed systems, repairs, discovery of straight discharge to surface waters) [6]:

- VDH should establish a referral service for the homeowner with information on private sector providers (see section 1B). **Need more info.**

A statutory waiver would be needed to allow for lifetime repairs of septic systems, regardless of soil site conditions, and with certain conditions attached to property transfers. **Need more info.**

VDH should develop a full inventory and map of all systems in the state.

All information provided by private sector should be submitted to VDH electronically. **Policy.**

There is general agreement that permits should be submitted electronically, which would make both the submission process and the review easier. Online applications might also make it easier for the applicant to know immediately if the application meets the regulations, by virtue of automatized features and parameters. More needs to be discussed about the role of technology. **This is a long-term project.**

Issues Outside of the Scope of VDH/SHIFT

Need to address contingency that continued depressed building rates might mean no increase in work for OSEs despite discontinued VDH involvement. **Need more info.**

~~Each party in the process of developing and installing the onsite septic system should assume liability for his part of the process:~~ **Liability is difficult to address; for the most part, it is up to the judicial system to determine liability. Legislation could address some liability issues. This is covered in other laws and beyond the scope of this process. A recommendation came up to**

require a license number on completion statements – VDH has this authority but has to approve a properly-designed system even if done by someone without a license.

- The designer should assume liability for the design and ensuring that the system is installed per the design. [NB: This would require a legislative change by the General Assembly].
- The owner (homebuilder or owner agent) should assume full liability for the system for the length of the warranty (usually one year).
- The VDH should be liable only for its part in ensuring that the system meets regulations.
- If the VDH performs risk-based final inspections, then different levels of liability would ensue.
 - Sites that receive final VDH inspections would have lower liability and those that do not receive final VDH inspections would have higher liability. The higher liability would be enforced by requiring a bond to accompany licensure (similar to the homebuilding licensure model). [2]

Meeting #4 Appendix III: SHIFT Recommendations Comments

SHIFT Recommendations_9.18

0 General Document comments
231 Sentence and Paragraph comments

Comments are due September 25, 2013 23:59

| | |
|---|--------------|
| VDH SHIFT Stakeholder Advisory Committee Meeting | 1 |
| DRAFT RECOMMENDATIONS | 2 |
| The following are ideas for recommendations developed during the second and third meetings of the SHIFT Advisory Committee. | 3 |
| Only a handful of these ideas were tested for consensus at the very end of the third meeting. Where this emerging agreement was expressed or tested, it is noted in the text. | 4 |
| It is expected that this document will undergo significant changes, deletions, and additions before it is completed by the end of November. | 5 |
| Key: | 6 |
| • Red text = VDH initial, first impressions of recommendation | 7 |
| • "No change" = Recommendation reflects current practice or program requirements | 8 |
| I. <u>ROLES AND RESPONSIBILITIES</u> | 9 [1] |

Paragraph 9 [1]

| | |
|--|---|
| <p>bob marshall: The SHIFT Committee needs to further relate roles and responsibilities with identification of potential conflicts of interest.</p> <p>Example, When an Environmental Health Specialist encounters a potential conflict of interest (to be specified), the local health department shall request the applicant to employ a licensed onsite soil evaluator not having a conflict of interest regarding the system or lot.</p> <p style="text-align: center;">REPLY</p> |  Sep 25, 2013 |
|--|---|

- A. **CHARGE 1A: 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, and which by the Private Sector?** **10 [3]**

Paragraph 10 [3]

| | |
|---|---|
| <p>Jeff Walker: Direct design services are not one of the 10 Essential Services of Public Health</p> <p>I do not envision any suitable solution until the VDH provides a 60 day announcement that effective January 1st, 2014 the department will cease site evaluation and design. After this date the staff will only be working for benefit of the means tested population within certain narrowly defined circumstances which we can discuss.</p> <p style="text-align: center;">REPLY</p> |  Sep 23, 2013 |
|---|---|

| | |
|--|---|
| <p>Jeff Walker: Necessities for improving private sector participation have been identified by VDH administrators. In an address to Heartland Institute prior to licensure Dwayne identified the following issues:</p> <p>Improving collaboration and networking with private sector service providers to assure that direct delivery of service is adequately performed in a timely manner. Building capacity in the private sector to assure that adequate and timely delivery of service is available to the public. The summary: Anyone believing that the private sector will not be influenced by economic factors rather than sound public health practices is deluding themselves. I feel that few, if any, field E.H. Managers believe the program is headed down the right path.</p> <p style="text-align: center;">REPLY</p> |  Sep 23, 2013 |
|--|---|

bob marshall: There needs to more discussion and development of the employee work profile as it relates to § 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of permits; inspections; civil penalties.

REPLY  Sep 25, 2013

1. **SUBCHARGE 1A1: Identify the Department’s core functions and responsibilities in assessment, policy development, and quality assurance (see the 10 essential services for environmental public health).** **11**
 - a. There is strong consensus that VDH should maintain a strong oversight role in the new onsite program. **12**
 - b. The VDH should include all duties not requiring a license. **No change** **13**
 - i. A system of certification and recertification is needed. **[1] Need more info, but probably would require legislation** **14 [2]**

Paragraph 14 **[2]**

Bill Sledjeski: ?

DPOR

REPLY  Sep 23, 2013

Paragraph 14, Sentence 1 **[1]**

Jeff Walker: sewage design is engineering, or for those exempted from the license. This is under existing law 54.1

This suggestion is patently absurd; clearly from persons unfamiliar with requirements.

REPLY  Sep 23, 2013

- ii. VDH needs to provide stronger oversight of OSEs, including requiring continuing education requirements to ensure consistent application of services. **This is in DPOR’s area of authority** **15 [3]**

Paragraph 15 **[3]**

Jeff Walker: Complaints must be addressed to DPOR, by plan reviewers, citizens, professionals under license. VDH seems to be reluctant to do it’s duty to differentiate between trivial or typographical issues and the calling out incompetence or abuse.

REPLY  Sep 23, 2013

Mark Courtney: Oversight of DPOR licensees—in terms of their performance of services that are controlled by other entities such as VDH—is not reserved solely to DPOR. DPOR’s role in regulating professional standards of practice (see complete text in Full Comment)...

Oversight of DPOR licensees—in terms of their performance of services that are controlled by other entities such as VDH—is not reserved solely to DPOR. DPOR’s role in regulating professional standards of practice does not extend to interpreting or enforcing statutes, regulations, policies, or procedures under the purview of other agencies.

In the case of licensed Onsite Sewage System Professionals (OSSPs), VDH is indeed authorized to provide oversight or to require continuing education in exercising its mandate to protect public health and groundwater supplies in the Commonwealth. Complaints processed by DPOR are limited to those involving alleged regulatory violations of standards of practice and minimum professional competency.

As with local building officials vis-à-vis licensed contractors, DPOR does not process complaints alleging building code violations per se; rather DPOR enforces a board regulation specific to ‘failure to abate a building code violation’ documented by the local building official—because the building official is the entity responsible for interpreting the building code, not DPOR or the Board for Contractors.

Similarly, in issuing permits and conducting inspections, VDH—not DPOR—is the appropriate oversight body for interpreting whether OSSPs are deemed in compliance with system-related health and safety standards. DPOR would receive complaints specific to whether, for example, if VDH had found an OSSP in violation of VDH’s statutes, regulations, policies, or procedures.

 Sep 24, 2013

With regard to conflict-of-interest, DPOR professions (i.e., home inspectors, real estate) generally address this issue through disclaimer rather than disclosure.

REPLY

bob marshall: The problem of consistent application of services is a direct result of VDH perpetrating a double standard for DPOR licensees. For example, VDH has not enforced 54.1-410.B of the Code for license holders working for VDH.

GMP#153
June 11,2010
Page 2 of 5
"VDH will routinely provide DPOR with reports containing information on the individuals who invoke the exemption from the engineering requirements and information on the number and type of systems designed pursuant to said exemption."

VDH Regulations and Authority
Section 54.1-410.B of the Code requires all agencies to take steps to ensure that plans and specifications related to improvements to real property are prepared by a properly licensed individual: Any public body authorized by law to require that plans, specifications or calculations be prepared in connection with improvements to real property shall establish a procedure to ensure that such plans, specifications or calculations be prepared by an architect, professional engineer, land surveyor or landscape architect licensed or authorized pursuant to this chapter in any case in which the exemptions contained in §§54.1-401, 54.1-402 or §54.1-402.1 are not applicable.

This requirement is addressed in the Emergency Regulations (12 VAC 5-613-70.E): All plans and specifications for AOSS shall be properly sealed by a professional engineer licensed in the Commonwealth pursuant to Title 54.1 of the Code of Virginia unless such plans are prepared pursuant to an exemption from the licensing requirements of Title 54.1 of the Code of Virginia. When plans and specifications are prepared pursuant to an exemption, the designer shall provide a certification statement; in a form approved by the Division, identifying the specific exemption under which the plans and specifications were prepared and certifying that he is authorized to prepare such plans pursuant to the exemption.

REPLY

c. VDH should manage onsite septic policy. 16

i. VDH provide private sector with updated policy information, and improve its communication with the private sector. 17 [2]
Policy

Paragraph 17 [2]

Bill Sledjeski: Important
Present local and state policy is lacking. Must be timely. Present policy often becomes known only following application rejection.

REPLY  Sep 23, 2013

Jeff Walker: agree with Bill

REPLY  Sep 23, 2013

d. VDH should draft and issue operating permits. No change 18

e. VDH should maintain and manage records and data, in the same manner as building inspection officials. Policy 19 [3]

Paragraph 19 [3]

Erik Johnston: would this entail additional cost for VDH and localities?

REPLY  Sep 20, 2013

Jeff Walker: record keeping has always been VDH's duty, not only sewage, also births/deaths etc. fees are strictly policy and or law.

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| REPLY |  Sep 23, 2013 |
| <p>Jim Bowles: Possibly. It depends on the expectations for how the data is collected and/or shared.</p> |  Sep 24, 2013 |
| REPLY | |

- f. VDH should conduct inspections. 20
- i. VDH inspectors need to be trained to understand location of systems (GPS, tank, well, footprint) as well as trained in how to record that data. **Policy** 21
- ii. Inspections should ensure compliance with the permitted design, not just the minimum requirements. **Regulation/legislation** 22 [2]

Paragraph 22 [2]

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| <p>Dr. Charles Devine: Designer should inspect and certify the system was installed in accordance with the design.</p> <p>All installations will have some degree of variation from exact specifications. Designer should be the one to judge if the installation is within acceptable variation and "good enough".</p> |  Sep 24, 2013 |
| REPLY | |
| <p>Jeff Walker: Agree w/ Dr. Devine; this does not require any changes to policy or regulation.</p> |  Sep 24, 2013 |
| REPLY | |

- iii. VDH should be able to inspect any site at any time throughout the process. **No change** 23
- iv. VDH should require periodic inspection of *all* systems (not just alternative systems). **[4] [3] Legislation** 24 [8]

Paragraph 24 [8]

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| <p>Erik Johnston: why require periodic inspections? Who will pay for this?</p> |  Sep 20, 2013 |
| REPLY | |
| <p>Sandra Gentry: Alternative system owners pay for inspections</p> <p>The AOSS regulations require owners of alternative systems to have inspections by a licensed professional at least once a year. Similar legislation could be passed requiring inspections of all systems. It's the owner's responsibility to see that their system is functioning properly and if that means paying for an inspection, so be it. Very few owners pay any attention to their system until it's backing up into the house or making a smelly pond on the lawn. Funding may be needed for low income owners, but inspections of conventional systems should not be nearly as expensive as for alternative systems.</p> |  Sep 20, 2013 |
| REPLY | |
| <p>Bill Sledjeski: Agree</p> <p>All systems should be inspected periodically based on complexity. The cost should be borne by the system owner.</p> |  Sep 23, 2013 |
| REPLY | |

Jim Bowles: In the Chesapeake Bay Protection Area (essentially east of I-95) owners of conventional systems are already required by law to have the septic tank pumped (or inspected) every five years.

REPLY  Sep 24, 2013

Paragraph 24, Sentence 1 [4]

Dr. Charles Devine: I wonder if the costs associated with yearly inspections are justified.

I can see inspections required based on the maintenance requirements specified by the designer of the system or components. I don't think conventional systems need yearly inspection. Perhaps a requirement for tank pumpout based on tank size and number of occupants maybe?

REPLY  Sep 24, 2013

Jeff Walker: Agreed, cost must be justifiable. The most likely people to see failing or problem systems are licensed.

Clarifying the reporting responsibilities of license holders will increase feedback w/ minimal cost. Specifically Operators (which includes pumpers), Designers; and occasionally installers.

REPLY  Sep 24, 2013

Jeff Walker: Pumpers should be required to record pump-outs at VDH

REPLY  Sep 24, 2013

Sandra Gentry: For this to work, someone (VDH?) needs to specify how often existing conventional systems should be inspected, what that inspection entails, and which licensed professionals can do it.

If this becomes a requirement, new systems by private designers should have specified inspection intervals, whether conventional or alternative.

REPLY  Sep 24, 2013

V. For VDH inspections prior to installation (i.e., Level 2 Inspections), the following are options: 25

a. VDH should conduct level 2 inspections 100% of the time. [3] Policy 26 [4]

Paragraph 26 [4]

Erik Johnston: Is this necessary? What is current policy?

REPLY  Sep 20, 2013

Mr. Dwayne Roadcap: VDH's program for reviewing applications employs two basic levels of review: the in-office Level 1 Review and the field check or Level 2 Review. A minimum 10 percent Level 2 review is expected, before the approval is given.

REPLY  Sep 22, 2013

Jeff Walker: Dwayne is accurate, furthermore the cost projections for Level 1 review have been based upon 1-2 hours; a level II review may take 8 hours, sometimes more than 1 staff member is required.

REPLY  Sep 23, 2013

Sandra Gentry: It is my understanding that some localities already require 100% Level II reviews. Somehow they are managing to do them. If this is what is to come, the localities doing this already are role models for VDH.

REPLY  Sep 24, 2013

- b. VDH should conduct level 2 inspections when it deems necessary – and on a sliding scale of up to 100% of the time in areas where soils present high risks. 27 [1] [1] [3] Policy

Paragraph 27 [1]

Paragraph 27, Sentence 1 [1]

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| <p>Bill Sledjeski: Agree</p> <p>Alternatives should be 100%. Conventional should be optional(sliding scale) depending on soil/site conditions and documentation of percolation/ksat and monitoring well data.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p> |  Sep 23, 2013 |
|--|---|

- c. VDH should conduct level 2 inspections when requested by the designer. 28 [3]

Paragraph 28 [3]

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|---|--|
| <p>Erik Johnston: If they request, then designers should pay for these inspections.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p> |  Sep 20, 2013 |
| <p>Jeff Walker: the fees paid by consumers of design services currently cover these inspections. Changes may be made under legislation</p> <p style="text-align: left; margin-top: 5px;">REPLY</p> |  Sep 23, 2013 |
| <p>Bill Sledjeski: Disagree</p> <p>All inspections should be included in VDH oversight policy which should be covered in application/design review fees.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p> |  Sep 23, 2013 |

- 1. VDH should establish a mechanism by which designer may request more integration with VDH for review and guidance with high-risk sites. 29 [3] [3] [2] Need more information

Paragraph 29 [3]

Paragraph 29, Sentence 1 [3]

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| <p>Jeff Walker: Not my issue, however I interpret this to be a continuation of "courtesy review"</p> <p style="text-align: left; margin-top: 5px;">REPLY</p> |  Sep 23, 2013 |
| <p>Jeff Walker: Public service are two words which should be remembered when collecting a fee.</p> <p>If a designer wishes to review a site with a regulator (code official) the process should be in support of the public's interest. Clearly a designer is in a position to know which site's deserve discussion and cooperation to arrive at a solution. Repairs almost always require cooperation, marginal sites for many reasons which may not be apparent in a soils or site report deserve special consideration.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p> |  Sep 24, 2013 |
| <p>Jeff Walker: Review of sites is not supposed to be adversarial.</p> <p>The public should be able to rely upon professionals working together to arrive at a design solution.</p> <p>There have been too many examples of EHS who do not understand their proper role in reviewing a site report. A question is not a reason to cite a violation, clarification is necessary and similar to the Building Inspector there is often middle ground which complies with the Regulation, but</p> |  Sep 24, 2013 |

requires negotiation to establish and document in a permit to construct.
REPLY

- 2. VDH should provide technology assistance (e.g., field reviews). **Policy** **30**
- d. VDH should provide level 2 inspections when required and funded by the county. **[1] [4] Need more information/explanation** **31 [2]**

Paragraph 31 [2]

Erik Johnston: I am also interested in more information/clarity on this suggestions
REPLY  Sep 20, 2013

Paragraph 31, Sentence 1 [1]

Jeff Walker: SHADAC has discussed this, local ordinances should not be administered by VDH staff, however in practice there is a governmental obligation which deserves further discussion.  REPLY Sep 23, 2013

- vi. For VDH inspections after installation (i.e., final inspections), VDH should develop a dual inspection system that would operate as follows: **[12]** **32 [4]**

Paragraph 32 [4]

Sandra Gentry: Coordinating dual inspections has the potential to delay completion of a job with the danger of weather related events damaging a system that has not been backfilled. I (and most other installers I have spoken with) support 100% inspections by VDH.  Sep 22, 2013
REPLY

Jeff Walker: agreed, policy; the minimum standard as enforced by VDH may differ from the plan approved in permit. It seems unreasonable to involve the VDH in approving changes or assessing compliance with a designers intent; especially for alternative systems.  Sep 23, 2013
REPLY

Bill Sledjeski: Mostly agree.
Designer (other than VDH) is required to provide completion statement. Coordination can be an issue. A VDH opt out option should be available following notification.  Sep 23, 2013
REPLY

John Ewing: Online Practical Aspect
If permit is submitted Online, the scheduling of the inspection could be posted Online and then in turn be made apparent to the local EHS. The EHS would have the option to inspect the system or not. There would be no need for the installer to make another call to set up an inspection.  Oct 9, 2013
REPLY

- a. The VDH role should be to inspect the installation to ensure that it meets the design in the following ways: a) it is located where specified in the design; b) it meets the sizing specifications; c) it complies in all ways with the regulations. **Policy** **33 [4]**

Paragraph 33 [4]

Erik Johnston: Is this intended to increase or decrease the inspections level of scrutiny?
REPLY  Sep 20, 2013

Jim Bowles: Erik, The way I read this suggestion, it is independent of the number of inspections and just suggests what items VDH should look at during an inspection. But I didn't make the original comment.
REPLY  Sep 24, 2013

Sandra Gentry: Any inspection should also determine if the components specified in the design are actually installed.
There has already been a long discussion in another committee regarding substitutions of products by installers and it was deemed practicing design without the proper license.
REPLY  Sep 24, 2013

David Lentz: The inspection should include verification that the system is built per the design plans, as well as the regulations.
REPLY  Sep 24, 2013

- b. The VDH final inspection should be within 48 hours of notice. **Policy** **34** [4]

Paragraph 34 [4]

Erik Johnston: Is this realistic time frame? Would additional staff be required?
REPLY  Sep 20, 2013

Sandra Gentry: Over 48 hours is generally unacceptable to installers.
It's difficult enough to predict exactly how long it will take to install a system. Forty eight hours notice is reasonable given worries about unexpected weather events (rain or snow) impacting a system that is installed but not covered up. For the installer, twenty four hours is more desirable, but perhaps not possible. In our district, we usually give twenty four hours notice to the health department for inspecting the installation of systems they designed and that hasn't been a problem except in rare circumstances.
REPLY  Sep 20, 2013

Jeff Walker: I require 2 days notice of intent to begin; always schedule inspections at installers convenience.
It is critical that systems be covered before damage from unforeseen weather occurs.
REPLY  Sep 23, 2013

Jeff Walker: Damage includes floating tanks, erosion deposition in trenches, floated lines and broken fittings.
This is not a trivial issue.
REPLY  Sep 25, 2013

- c. If VDH does not conduct 100% inspections, then all installers should be required to report the installation and VDH would have option to conduct an onsite final inspection: **Regulation/Legislation** **35** [3]

Paragraph 35 [3]

Sandra Gentry: I don't support this option. I believe it is the responsibility of the VDH to assure that all

systems are installed in accordance with regulations and the design.

REPLY  Sep 23, 2013

Bill Sledjeski: Agree

REPLY  Sep 23, 2013

David Lentz: Agreed

REPLY  Sep 24, 2013

1. At random (to ensure installer ready at any time) [1] and Policy 36 [1]

Paragraph 36 [1]

Sandra Gentry: The health departments we work with already do some random "drive by" checks. It's fairly rare but I don't think anyone objects nor should it be a requirement.

REPLY  Sep 24, 2013

2. Risk-based – based on history, soil, lot size, proximity to water (public water and wells), contractor history. 37 [1]
[1] [5] Policy

Paragraph 37 [1]

Paragraph 37, Sentence 1 [1]

Jeff Walker: Foods are regulated based upon risk analysis, septic systems logically can be assessed based upon risk also.

Risk factors include environmental (e.g. depth or distance to water, location and setbacks, scope and scale; historical and local knowledge.

REPLY  Sep 23, 2013

- g. Should VDH provide design? [4] Options for consideration are: 38 [7]

Paragraph 38 [7]

Sandra Gentry: VDH should continue to provide design services in some clearly defined circumstances. [Edited]

The overwhelming majority of people I have spoken with (mostly installers) feel that total privatization of soil and design work is not in the best interest of public health and the people of Virginia. The major concerns are the need for expedited repairs of failing systems and the added expense of private design work. Also, there is concern about those areas of the state which have very few, if any, designers. If the private sector doesn't see enough profit there, those folks may have a very difficult time getting services.

REPLY  Sep 23, 2013

Jeff Walker: There are no areas of the state which lack access to OSE, competition with subsidized fees are a factor.

Presumably with rising demand market factors will influence availability and price.

REPLY  Sep 23, 2013

Bill Sledjeski: Agree with "some clearly defined circumstances" only.

REPLY  Sep 23, 2013

Paragraph 38, Sentence 1 [4]

Jeff Walker: How does this fit into the 10 essential services of public health?
 The only reason for VDH staff to be designing for the benefit of private owners is when the consequence of not intervening is a risk to public health. The liability must be judged worthy of the state's interest.
 REPLY  Sep 23, 2013

Jeff Walker: Clearly the limits should only include occupied homes, which have not been condemned and are suitable for habitation as judged by the Building official.
 I offer these suggestions as a starting point:
 • Systems wherein the state has some liability, or responsibility due to culpability or other circumstances.
 • Systems which failed despite compliance with the prescriptive regulation, and which were certified by a VDH forensics and design team of OSE or PE.
 • Owners who have tenants under lease which are receiving public assistance and complying with certain requirements under Housing Authority.
 REPLY  Sep 23, 2013

Jeff Walker: Essential services may be reviewed here:
http://en.wikipedia.org/wiki/10_Essential_Public_Health_Services
 REPLY  Sep 23, 2013

Jeff Walker: Code of Virginia requires that only PE and OSE design sewage handling systems§ 54.1-402. A, 11, § 54.1-2302 requires a license, why has that requirement been violated?
 Septic design should only be under license in compliance with Regulation and VA Administrative Code. VDH internal policy may allow for staff possessing license to undertake design under clearly defined circumstances, VDH is the only state agency which designs improvements to private property.
 REPLY  Sep 23, 2013

- i. VDH should never design systems, standard or alternative. **Legislation**

39 [5]

Paragraph 39 [5]

Erik Johnston: I oppose this language.
 REPLY  Sep 20, 2013

Bill Sledjeski: This is the goal of SHIFT but in my opinion there should be allowances for conventional systems only. No alternatives.
 REPLY  Sep 23, 2013

Jim Bowles: Bill, I'm not disagreeing with you, but why would you not include alternatives? Just asking for more discussion.
 REPLY  Sep 24, 2013

Jeff Walker: COI was the VDH's purpose in recusing itself from advanced system design.
 Jim, what has changed?
 VDH is still providing review and approval of proprietary systems. Can the same agency which approves also "pick favorites?"
 REPLY  Sep 24, 2013

Jim Bowles: I didn't say that anything had changed. I'm asking Bill for his reasons.

REPLY



Sep 24, 2013

- ii. VDH should be able to design alternative systems in repair/emergency situations (See SECTION X) **Policy** 40 [5]

Paragraph 40 [5]

Erik Johnston: VDH should maintain ability to provide direct services in all areas of the state for new construction and repair. Also fine with VDH designing alternate systems when needed. [Edited]

REPLY



Sep 20, 2013

Jeff Walker: current policy prohibits due to conflict of approving vs. specifying proprietary products. How can the VDH avoid this conflict?

REPLY



Sep 23, 2013

Bill Sledjeski: Disagree as a VDH standard of practice only as an exception for certain conditions. VDH should not design alternative systems..

REPLY



Sep 23, 2013

Jeff Walker: Designer must show license; courts and policy require pump calculations and other specifications be performed in recognition of duty to client.

When will VDH staff comply with the license requirement for designs to bear signature and address of PE/OSE?

REPLY



Sep 24, 2013

bob marshall: Not clear how this would be a recommendation or concern of SHIFT. What would preclude the commissioner's authority to issue an emergency order? In addition, there appears to be no "Section X", i.e., note citing (SECTION X). **Tags:**administrative code

12VAC5-610-160. Emergency order or rule.

If an emergency exists the commissioner may issue an emergency order or rule as is necessary for preservation of public health, safety, and welfare. The emergency order or rule shall state the reasons and precise factual basis upon which the emergency rule or order is issued. The emergency order or rule shall state the time period for which it is effective.

Statutory Authority

§§ 32.1-12 and 32.1-164 of the Code of Virginia.

REPLY



Sep 25, 2013

- iii. Where there is only one private provider (i.e., no choice), or where the cost for systems is above the regional average, then VDH may do the design. [1] [6] **Not sure** 41 [4]

Paragraph 41 [4]

Erik Johnston: I oppose these limitations. I support VDH maintaining its ability to provide direct services.

REPLY



Sep 20, 2013

Bill Sledjeski: Disagree

REPLY



Sep 23, 2013

Jeff Walker: Design is properly contracted by owner with designer.
 The cost of design is a private matter and is a function of the complexity of a site and the owners goals.
 REPLY  Sep 23, 2013

Paragraph 41, Sentence 1 [1]

Jeff Walker: OSE & PE are qualified to perform this work, and are well distributed throughout state.
 If the VDH feels that areas which have relied upon public design staff in the past might consider internal policies to encourage shift from public to private sector, There are valid policy and budget reasons to develop this suggestion. Chief among these is the lower cost of comparable private design services, and removing the taxpayer burden, conflict of interest, and administrative burdens.
 REPLY  Sep 23, 2013

- iv. Larger, more complex jobs need to go to the private sector. [3] Policy

42 [5]

Paragraph 42 [5]

Erik Johnston: It is fine to incentivize these jobs being done by the private sector and it appears that much of this work is done by the private sector, however need flexibility for VDH to work on larger more complex jobs.
 REPLY  Sep 20, 2013

Jeff Walker: VDH lacks experience and authority to design alternative, or mass drainfields. These issues are far to complex to be carried at public expense.
 REPLY  Sep 23, 2013

Jim Bowles: While I don't necessarily agree with the original comment,for the purposes of discussion, I don't know of any limit to our legal authority to design systems based on size and that our technical services PEs are well qualified and well experienced.
 REPLY  Sep 24, 2013

Jeff Walker: There may be no "legal limit" however your staff must stamp and certify the design as license holders.
 I'll leave it to your policy to integrate the indemnification, or sovereign immunity; which I'd be interested in learning whether it covers professional liability.
 REPLY  Sep 24, 2013

Bill Sledjeski: VDH should not design "large, complex jobs"
 REPLY  Sep 23, 2013

- v. In areas where there is limited development (i.e., mostly repair designs), maybe the VDH should be allowed to do designs. 43 [1] Not sure

Paragraph 43 [1]

Erik Johnston: I do not think VDH should be limited to areas with limited development.
 REPLY  Sep 20, 2013

- h. VDH should provide for homeowner education.

44 [1]

Paragraph 44 [1]

Bill Sledjeski: AGREE. Need to provide all new and transfer owners with an O and M manual for all systems. Maybe even a call or visit from VDH explaining the importance of "caring" for the system.

REPLY



Sep 23, 2013

- i. Upon sale of a property, VDH should require both an inspection and education via a handout for homeowners. **Policy (but may need legislation for resources)** One method of enforcing this requirement would be to initiate a renewable operation permit. [1] [11] **Legislation** 45 [2]

Paragraph 45 [2]

Erik Johnston: I am wary of this becoming an unfunded mandate that would be forced on localities.

REPLY



Sep 20, 2013

Paragraph 45, Sentence 2 [1]

Jeff Walker: There is a public health issue, along with an educational opportunity here.

Legislation may be required clarifying issues such as frequency, qualifications of inspector, and reporting.

REPLY



Sep 23, 2013

- ii. VDH should develop and expand an education program for realtors (e.g., the Loudoun County model), community groups and homeowners. [4] [1] **Need more info; what is the "Loudoun County Model"?** 46 [4]

Paragraph 46 [4]

Paragraph 46, Sentence 1 [4]

Sandra Gentry: Master Septic Owners Network?

The Virginia Cooperative Extension sponsors the Master Well Owners Network, Extension agents and trained volunteers who educate the public about private wells. This model could be used for septic owners also. VDH working together with VT could establish this program which could go a long way to having more informed owners of septic systems.

REPLY



Sep 19, 2013

Erik Johnston: I like this idea

REPLY



Sep 20, 2013

Jeff Walker: DPOR WoodOp (OSE)Board has ruled that septic inspections (SAP walkovers) are not currently regulated, as in no requirement to be licensed. [Edited]

REPLY



Sep 23, 2013

Sandra Gentry: This may be a good opportunity to regulate inspections.

REPLY



Sep 23, 2013

- a. VDH should periodically mail information to homeowners (e.g., property tax mailing). [2] **Policy, but a resource** 47 [2]

issue.

Paragraph 47 [2]

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|---|---|
| <p>Erik Johnston: the extension idea in number 46 is better because it would cost less to implement.</p> <p>REPLY</p> |  Sep 20, 2013 |
| <p>Sandra Gentry: There would still be a cost for resources through VA Tech and for funds to pay Extension agents. I have no idea which would be more expensive but the volunteers would expand the number of people available to get the word out.</p> <p>REPLY</p> |  Sep 20, 2013 |

- 2. **SUBCHARGE 1A2: Identify how the Department can assure quality and timely direct services are provided to the public and local governments, especially given regional differences.** 48 [3]

Paragraph 48 [3]

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|--|---|
| <p>Jeff Walker: There is no Constitutional right to sewage services, how is this a responsibility of Government?</p> <p>REPLY</p> |  Sep 23, 2013 |
| <p>Jim Bowles: Provision of services, especially in the case of a failing system, is a public health issue. Protection of public health is a government issue.</p> <p>There is no constitutional right to immunizations, but may be provided by the health department to protect the general public from disease.</p> <p>REPLY</p> |  Sep 24, 2013 |
| <p>bob marshall: This subcharge can not ignore Implementation of the Onsite Sewage Quality Assurance Program October 17, 2007</p> <p>Standing Policy - "EH Supervisor/Technical Specialist Completes at least one Level II review for each assigned subordinate each quarter. Completes at least ten file reviews for each subordinate. Documents findings and implements plan to address deficiencies and improve performance. Identifies and informs manager of resources (training, equipment, etc) needed by subordinates to maintain and improve quality. Encourages collaboration among all levels of staff to promote program excellence.</p> <p>EH Manager Initiates and manages QA process for each environmental health program to ensure compliance with state and local regulation, policies and program standards. Evaluates individual and system performance, identifies problems, develops and implements plan to resolve problems and improve performance. Reports results to district director and/or OEHS as requested. Obtains necessary resources to maintain and improve program performance. Collaborates with other EH managers and OEHS staff to identify and implement methods to improve environmental health services."</p> <p>REPLY</p> |  Sep 25, 2013 |

- a. Third party inspections should be an option in special circumstances when the need to protect public or environmental health is urgent and when the VDH is unavailable to perform inspection. [1] [4] Need more info; may need no change 49 [1]

Paragraph 49 [1]

Paragraph 49, Sentence 1 [1]

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|--|---|
| <p>Bill Sledjeski: Either VDH or designer no third party. This is an isolated condition. Third party would be accpeting liability.</p> <p>REPLY</p> |  Sep 23, 2013 |
|--|---|

3. **SUBCHARGE 1A3: Identify the Department’s resource needs to perform the core functions that are necessary to protect public health and groundwater supplies.** 50

a. If the VDH does provide 100% final inspections, then it will need to ensure it is adequately staffed for this role. [7] **Legislation (budget) may be needed** 51

4. **SUBCHARGE 1A4: Identify ways to keep a “checks and balances” system in place.** 52 [1]

Paragraph 52 [1]

Jeff Walker: Recent SHADAC exchange revealed there are few “checks & balances” DEq expected notice of waivers, but has not received such. Significant issue upon repairs which introduce sewage beneath the water table.

REPLY



Sep 23, 2013

a. There is strong consensus that all site evaluation and design work must be done under licensure – whether by private providers or state employees. [10] **No change in law.** [1] **Follow-up discussion about work product expectations will be developed.** 53 [9]

Paragraph 53 [9]

Erik Johnston: What percentage of state employees doing this work currently are not under licensure? Will this hamstring health departments current capabilities? If it does then there needs to be a time period allowed for health department to acquire licensure.

REPLY



Sep 20, 2013

Jeff Walker: This is an important issue. Design under PE or OSE license is required by code, and requires showing name and address of the license holder. This has not yet been accepted by VDH, and flaunts the law. the conflict of interest is substantial, how can the agency compete with the same field it’s meant to oversee, and within the same set of products which it bears responsibility for approving?

REPLY



Sep 23, 2013

Bill Sledjeski: Or under the direct supervision of the licensee either VDH or designer with a licensee sign off.

REPLY



Sep 23, 2013

Jeff Walker: All OSE licensees have been under the same law since July 2009.

REPLY



Sep 23, 2013

Jim Bowles: VDH policy is that all employees who evaluate sites and design onsite sewage systems either have a license or work under the supervision of licensed employee.

REPLY



Sep 24, 2013

Jeff Walker: Jim Bowles; on Thursday please bring one VDH design which bears an OSE signature which documents compliance with this “policy.”

REPLY



Sep 24, 2013

Jeff Walker: Indeed the engineering code applies and requires our work be identified, specifically bearing name & address of the designer. And invoking by authority, either a PE license, or exemption to the license (54.1-402.A.11).

REPLY



Sep 24, 2013

Jeff Walker: "Policy," written or unwritten? Please provide a copy if written.

REPLY



Sep 24, 2013

Paragraph 53, Sentence 2 [1]

Jeff Walker: Dwayne is correct, the issue is one of work product expectations.

Currently the products are not comparable, the private version has far more information, and exercises more control over the installer, in part this is due to GMP126B; in part due to concerns over oversight and liability.

REPLY



Sep 23, 2013

i. In cases where there are people in training, everybody who is doing site evaluation and design should be doing it under auspices of a licensed individual. **No change** 54

ii. There is still clarification needed on whether VDH staff reviewing designs also need a license. [1] One possibility is that just those doing the design need a license; another possibility is that a designer should expect his work to be reviewed by a similarly qualified person (though that's not required by law). **Need more info** 55 [1]

Paragraph 55 [1]

Paragraph 55, Sentence 1 [1]

Jeff Walker: This is an accurate capture of issues presented at DPOR.

The process of reviewing and drafting is a function of the Secretary of Health. Design is a license matter, though PE's expect a similarly qualified professional to review their work. And this has been the practice at VDH, DEQ, and ODW.

REPLY



Sep 23, 2013

b. The designer should be required to inspect the installation to ensure that it is installed correctly and according to design. [2] **No change** 56 [5]

Paragraph 56 [5]

Sandra Gentry: If VDH inspects 100% of installations, the designer should not be "required" to inspect.

REPLY



Sep 23, 2013

Dr. Charles Devine: VDH inspects to ensure design meets regulatory requirements.

Designer should want to know his design is installed in conformance with design specifications. Designer has some liability in this regard. As a designer of a different sort, I sleep better knowing that my design was correctly installed.

REPLY



Sep 24, 2013

Jeff Walker: Designer must always assign an inspector to verify compliance with construction specifications and site conditions.

REPLY



Sep 24, 2013

John Ewing: Best qualified is best inspector

An inspection should always be done by the designer. I will go another step to say that the OSE working an engineer should also be required to inspect. Although, it seems the engineer is taking full responsibility of a permit that doesn't mean that the OSE would be exempt from being lumped into a law suit. I for one would like to have some say how the installation and clearing was executed in the site and soil study area I reviewed.

REPLY



Oct 9, 2013

John Ewing: Well Drilling Inspections

The idea of when and who inspects should be revisited with the light of how well inspections are conducted in the state. When I was with VDH, I was told well drillers were given a little more credit due to the fact they were licensed. Consequently, there is great variability all over the state when it comes to well inspections. Some counties require an EHS to be present at the time of grouting. In the district I worked in we confirmed it was put in the correct place and there was grout present. It seems quite unfair that now installers are licensed there is no suggestion of any credit being given to the ability or ethics of the installer. A well driller grouting a well to IIC standards when the well was supposed to be grouted to IIB standards changes the stand-off of a well to a drainfield from 50 ft. to 100 ft. That is certainly a significant public health issue that gets entrusted in well drillers.



Oct 9, 2013

REPLY

- C. The VDH should issue an operating permit only after designer has signed off on the inspection to certify that the installation is correct [2] **No change** 57 [1]

Paragraph 57 [1]

Sandra Gentry: See comment for Paragraph 56. OPs should be issued when VDH is satisfied the system is correct.

REPLY



Sep 23, 2013

- d. For real estate transactions involving systems installed over five years ago, the state should mandate inspection by a licensed septic professional [1] **Legislation** 58 [3]

Paragraph 58 [3]

Erik Johnston: I am wary of this requirement being an unfunded mandate on localities. Who would enforce this requirement and what are potential costs?

REPLY



Sep 20, 2013

Sandra Gentry: This cost would not be to the state or localities, but to the owner (seller or buyer) just as any real estate inspection, usually paid at closing.

Some administrative cost would fall to VDH for record keeping but they would most likely not be doing the inspections.

REPLY



Sep 20, 2013

Bill Sledjeski: Agree with Sandra

REPLY



Sep 23, 2013

- e. Until the shift to maximal privatization is complete, VDH should be required to disclose at the time of a permit application: 59
 - i. The VDH service limitations, i.e. length of time, number of site visits, and design capabilities. [1] **Policy** 60 [2]

Paragraph 60 [2]

Erik Johnston: 60, 61 and 62 could be combined with requirement to provide citizens a full list of their public and private sector options for service and provide positive aspects of using private sector.

REPLY



Sep 20, 2013

Paragraph 60, Sentence 1 [1]

Jeff Walker: This is known as disclosure under COI standards, should be written and provided prior to

accepting fee for service, but is not presently a standard practice.

REPLY



Sep 23, 2013

- ii. The applicant’s options for obtaining service from a private service provider. **Policy** 61 [2]

Paragraph 61 [2]

Erik Johnston: This makes sense

REPLY



Sep 20, 2013

Jeff Walker: Agreed, this is known as disclosure and is a requirement under most codes of ethics.

REPLY



Sep 23, 2013

- iii. Other potential conflicts of interest, limitations, and options. [5] **Need more info** 62
- f. Licensed OSE’s should be required to report problems with onsite systems to the local VDH. (Note: this is already required but may not always occur.) [5] 63
- g. Each party in the process of developing and installing the onsite septic system should assume liability for his part of the process: **Liability is difficult to address; for the most part, it is up to the judicial system to determine liability. Legislation could address some liability issues.** 64 [1]

Paragraph 64 [1]

Erik Johnston: I would like to understand better how current liability works and to make sure we get good legal advice on any potential implications of changes.

REPLY



Sep 20, 2013

- i. The designer should assume liability for the design and ensuring that the system is installed per the design. [NB: This would require a legislative change by the General Assembly.] 65 [1]

Paragraph 65 [1]

Sandra Gentry: This depends on whether or not VDH does inspections of installations. Designers should be accountable for their work but if VDH inspects, the designer should not be accountable for the installation.

REPLY



Sep 23, 2013

- ii. The owner (homebuilder or owner agent) should assume full liability for the system for the length of the warranty (usually one year). 66
- iii. The VDH should be liable only for its part in ensuring that the system meets regulations. 67
- iv. If the VDH performs risk-based final inspections, then different levels of liability would ensue. 68
 - a. Sites that receive final VDH inspections would have lower liability and those that do not receive final VDH 69 [2]

inspections would have higher liability. [2] The higher liability would be enforced by requiring a bond to accompany licensure (similar to the homebuilding licensure model). [2]

Paragraph 69 [2]

Paragraph 69, Sentence 1 [2]

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|---|---|
| <p>Jeff Walker: To paraphrase Mark Courtney- no bonds are currently required under DPOR regulation. banks and financial institutions, contractors and developers sometimes require bonds etc.</p> <p>REPLY</p> |  <p>Sep 23, 2013</p> |
| <p>Mark Courtney: To clarify - the Board for Contractors does not require a bond for licensure.</p> <p>REPLY</p> |  <p>Sep 24, 2013</p> |

- h. The professional and ethical code of conduct for licensed OSE's need to be defined and/or clarified. 70 [1]

Paragraph 70 [1]

| | |
|--|---|
| <p>Jeff Walker: 12VAC 5 615 has a very complete set of ethical standards, we would like to see this incorporated into DPOR &/or VDH regulations.</p> <p>REPLY</p> |  <p>Sep 23, 2013</p> |
|--|---|

- i. DPOR staff should work with VDH to ensure proper reporting of conflict of interest. [1] [5] 71 [1]

Paragraph 71 [1]

Paragraph 71, Sentence 1 [1]

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|---|---|
| <p>Jeff Walker: COI, includes implementing mandates, for example backlog reporting. Meeting 3, data request, backlogs have been tabulated. Statewide only 58% of non-OSE applications were processed w/in the 15 working day requirement. Background, by state law in 1994 the VDH was mandated to break the backlog by triggering a requirement for Districts to begin contracting with OSE.</p> <p>REPLY</p> |  <p>Sep 23, 2013</p> |
|---|---|

- ii. Installers should be required to disclose if they are benefitting from the sale of a component. 72 [1]

Paragraph 72 [1]

| | |
|---|---|
| <p>Sandra Gentry: Designers need to disclose, too. OSE's and PE's should be required to disclose their benefit from sale of components as well.</p> <p>REPLY</p> |  <p>Sep 19, 2013</p> |
|---|---|

- iii. The complaint system should be clarified. 73
 - a. Would complaints still be handled by the VDH, or taken up by licensure board for the private sector? **Need more info.** 74 [2]
Complaints about licensed occupations are a DPOR issue. [1] Complaints about sewage facilities (or lack thereof) are a VDH issue.

Paragraph 74 [2]

Mark Courtney: Oversight of DPOR licensees—in terms of their performance of services that are controlled by other entities such as VDH—is not reserved solely to DPOR. DPOR's role in regulating professional standards of practice (see complete text in Full Comment)...

Oversight of DPOR licensees—in terms of their performance of services that are controlled by other entities such as VDH—is not reserved solely to DPOR. DPOR's role in regulating professional standards of practice does not extend to interpreting or enforcing statutes, regulations, policies, or procedures under the purview of other agencies.

In the case of licensed Onsite Sewage System Professionals (OSSPs), VDH is indeed authorized to provide oversight or to require continuing education in exercising its mandate to protect public health and groundwater supplies in the Commonwealth. Complaints processed by DPOR are limited to those involving alleged regulatory violations of standards of practice and minimum professional competency.

As with local building officials vis-à-vis licensed contractors, DPOR does not process complaints alleging building code violations per se; rather DPOR enforces a board regulation specific to "failure to abate a building code violation" documented by the local building official—because the building official is the entity responsible for interpreting the building code, not DPOR or the Board for Contractors.

Similarly, in issuing permits and conducting inspections, VDH—not DPOR—is the appropriate oversight body for interpreting whether OSSPs are deemed in compliance with system-related health and safety standards. DPOR would receive complaints specific to whether, for example, if VDH had found an OSSP in violation of VDH's statutes, regulations, policies, or procedures.

With regard to conflict-of-interest, DPOR professions (i.e., home inspectors, real estate) generally address this issue through disclaimer rather than disclosure.

REPLY

Paragraph 74, Sentence 3 [1]

Jeff Walker: Evidently the close nature of the EHS & OSE from past association has been the cause of some reluctance to call out poor practices.

There are many examples of EHS who left for private practice and discovered that the standards of practice were different. Indeed there have been suggestions by managers that many so called bad-actors were once EHS.

REPLY

b. VDH should still check on complaints, but refer work to private sector. **Need more info** 75

i. Regulations should be uniform across the state regardless of soil conditions, i.e. the regional EHS could eliminate district-to-district inconsistencies. 76 [3]

Paragraph 76 [3]

Erik Johnston: Is this even possible? Current laws, such as those aimed at protecting the Chesapeake Bay create different rules for localities in the watershed? Need more info on this suggestion

REPLY

Bill Siedjeski: VDH regulations should not include regional variations except when required by local/district/state/federal codes/regs such as Ches Bay.

REPLY

Jeff Walker: § 32.1-164.1:3, allows repair under waiver from regulation. Ironically many of these are in the Ches-bay watershed.

REPLY

5. SUBCHARGE 1A5: Identify how VDH staff can maintain expertise in the program. 77 [2]

Paragraph 77 [2]

Jeff Walker: OSE's are trained, tested and certified for licensure.
 VDH currently advertises for new employees, but does not require OSE licensure instead taking a policy of "must become certified."
 Does the Agency hire nurses or doctors under a similar policy?
 REPLY  Sep 23, 2013

John Ewing: Maintain?
 Before VDH staff can maintain a standard, their standards must be brought up to par with their own requirements for private OSE's. The first indication of an expert in the onsite septic world of design and soil work is the quality of the permit design/report. Many private OSE's do not see many health department permits. As an installer I see many. I know that I need in many cases a 10 - 20 page report where the health department could produce a 2 -3 page report. Standardization needs to be the number one priority if the health department wants obtain, let alone maintain, expertise in the program. I do not believe it is ethical for one to hold others to a high standard while holding one's own standards much lower.
 REPLY  Oct 22, 2013

- a. VDH inspectors should become certified or licensed. **Need more info.** 78
- b. A training should be developed to provide this certification or licensure to VDH staff. North Carolina could serve as a model for this effort. **Need more info** 79
- c. VDH should review and update its internal Quality Assurance/Quality Control policy. [2] **Policy** 80
- d. VDH staff and private sector providers need to be trained to use and gather GPS data for onsite septic sites (the standard used should be 10 feet). **Policy** 81
 - i. If a variance is needed, then either the VDH/OSEs/PEs may pursue the design. **Need more info** 82
- e. EHS staff should be required to spend a certain number of field days with installers/OSEs/operators to keep their onsite skills sharp. **Policy** 83
 - i. One option is to develop an extension training system. 84
- 6. **SUBCHARGE 1A6: Identify the elements or conditions that create choice and competition for services.** 85
 - a. VDH should maintain a roster of OSEs. [3] **Policy** 86 [6]

Paragraph 86 [6]

Erik Johnston: This idea makes sense to me.
 REPLY  Sep 20, 2013

Jeff Walker: Agreed, OSE active or requesting listing should be available on a printed sheet in each District.
 Foregoing a list creates clear COI issues wherein a wink and nod by staff constitutes recommendation. Only a written roster removes this COI. Furthermore the requirement to prevent "moonlighting" should be strengthened. The appearance of COI should be avoided.
 REPLY  Sep 23, 2013

Dr. Charles Devine: I don't want my offices maintaining lists.
 Let the various groups create their own lists that include regions served, job types undertaken, etc. Then when a client requests a referral, health departments provide a link to your privately maintained lists.
 REPLY  Sep 24, 2013

Jim Bowles: Currently, DPOR has the official list. I'm not sure it should be up to the local health departments to be sure that any such lists are accurate and up to date.

REPLY  Sep 24, 2013

Jeff Walker: how can the consumer verify whether a listee is public or private? There is no distinction on the DPOR site.

REPLY  Sep 24, 2013

Jim Bowles: Maybe the consumer can ask the OSE.

REPLY  Sep 24, 2013

- i. Develop an electronic bidding forum to ensure competition and to provide customers with choice. [3] [Legislation](#) **87** [5]

Paragraph 87 [5]

Erik Johnston: Not sure a full bidding process is needed. Main goal would be to maintain list of current providers and encourage citizens to get multiple quotes from private sector.

REPLY  Sep 20, 2013

Bill Sledjeski: No to a bidding forum

REPLY  Sep 23, 2013

Jeff Walker: caveat emptor

However the code official does exercise an oversight role in protection of some of applicant's interests.

REPLY  Sep 23, 2013

Sandra Gentry: This option seems to entangle VDH in the private side work. A simple list of private licensed individuals/companies (available from DPOR) would suffice and would be available to all system owners whether they are computer users or not.

REPLY  Sep 23, 2013

Jeff Walker: A DPOR list would have to be edited since there is no distinction between employers and VDH staff should not be offering consultant services.

REPLY  Sep 23, 2013

- ii. In low-service areas, develop a website where the private sector has the first opportunity to bid on a project before the homeowner may use VDH services. **88** [4]

Paragraph 88 [4]

Erik Johnston: I am willing to explore ways to encourage homeowners to check into private sector services first but oppose requiring them to use private sector services. Basically fine as incentive but not mandate.

REPLY  Sep 20, 2013

Jeff Walker: Provided there is disclosure of limitations of VDH staff OSE there is less incentive; financial incentive is problematic.

| | |
|---|---|
| <p>The public subsidy for onsite services should be analyzed and understood when setting fees for site evaluation by VDH staff. The information we understand from Dr Getzlers presentation is that less than 23% of cost is captured in fees.</p> <p>REPLY</p> |  Sep 23, 2013 |
| <p>Bill Sledjeski: No to a website developed by VDH for this purpose</p> <p>REPLY</p> |  Sep 23, 2013 |
| <p>David Lentz: This appears to be a conflict of interest for VDH.</p> <p>REPLY</p> |  Sep 24, 2013 |

- iii. In exchange for joining the roster, the OSE must agree to perform “X” hours of pro bono work. [2] [6] Legislation 89 [2]

Paragraph 89 [2]

Paragraph 89, Sentence 1 [2]

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|---|---|
| <p>Bill Sledjeski: No to this idea.</p> <p>REPLY</p> |  Sep 23, 2013 |
| <p>Jeff Walker: Absolutely not!</p> <p>REPLY</p> |  Sep 23, 2013 |

- a. In general, some variation of “pro bono” work has high levels of support. 90 [3]

Paragraph 90 [3]

| | |
|---|---|
| <p>Jeff Walker: pro bono has no support amongst the private sector. Guess you could say that people who didn't pay their bills got "probono" services.</p> <p>Furthermore the policy of VDH refunding application fees in the event of a denial sets a very bad precedent. Generally a denial takes more effort than a permit for all avenues must be exhausted, and a report written to document limitations. Adding insult to this policy is the practice of taking a denial letter to another designer and expecting them to design a system based upon that report. Design by rejection is a terrible policy.</p> <p>REPLY</p> |  Sep 23, 2013 |
| <p>Jim Bowles: Refunding the application fee is not just a policy, it's a requirement of the Code of Virginia. See 32.1-164.C</p> <p>REPLY</p> |  Sep 24, 2013 |
| <p>Jeff Walker: Requires legislative action</p> <p>REPLY</p> |  Sep 24, 2013 |

- iv. Charge a fee for the listing, to help subsidize low-income residents. [5] Legislation 91

- a. There is general support for the idea that fees should go to support repairs for those who can't afford them. 92 [2]

Paragraph 92 [2]

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|---|---|
| <p>Erik Johnston: I do not support us dictating what all fees must be used for. We should give VDH flexibility. I do think it is a good idea for report to state how big need is for repairs and support funding for VDH repair work.</p> <p>REPLY</p> |  Sep 20, 2013 |
| <p>Jeff Walker: I share this concern, there are already deficiencies in reporting financial relationships w/in VDH</p> <p>REPLY</p> |  Sep 23, 2013 |

7. SUBCHARGE 1A7: Evaluate options for responding to repair applications.

93 [1]

Paragraph 93 [1]

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|--|---|
| <p>Jeff Walker: Repairs must also meet the standards for engineering and design, including bearing OSE or PE signature.</p> <p>[Edited]</p> <p>Existing law is clear, present policy (GMP16B) ignores law in effect since July 2009. Is there any purpose served by allowing paraprofessionals to design septic systems on private property?</p> <p>REPLY</p> |  Sep 23, 2013 |
|--|---|

- a. VDH should develop a multidisciplinary district or regional “response team” to respond to difficult situations. [1] [5] [Need more info](#) 94 [1]

Paragraph 94 [1]

Paragraph 94, Sentence 1 [1]

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| <p>Jeff Walker: Forensic study, site and soil interpretation; and legal expertise in determining fault are public duties for assessing eligibility for repair under subsidy.</p> <p>Only VDH is equipped to assess financial eligibility for free or reduced prices services. This ought to be governed by a local Board, perhaps in cooperation with social services.</p> <p>REPLY</p> |  Sep 23, 2013 |
|--|---|

- b. VDH's highest priority should be repairs. In order to do site designs in cases of public health emergencies (e.g., failed systems, repairs, discovery of straight discharge to surface waters) [6]: [1] 95 [1]

Paragraph 95 [1]

Paragraph 95, Sentence 2 [1]

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|--|---|
| <p>Jeff Walker: Agency staff have not been trained or encouraged to identify straight, or crooked pipes.</p> <p>Often sewage problems can be identified by using GIS and remote sensing. The TMDL process has also been slow to use these tools, local boots on ground is the only way to serve this function which is clearly a public health priority. And requires police powers.</p> <p>REPLY</p> |  Sep 23, 2013 |
|--|---|

- i. VDH should establish a referral service for the homeowner with information on private sector providers (see section 1B). [Need more info](#) 96

- ii. Homeowners that meet a “means-test” (income threshold) should have access to: [Legislation](#) 97 [2]

Paragraph 97 [2]

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|---|--|
| <p>Jeff Walker: Legislation may not be needed since there is already a means test for these services. Determining eligibility could be accomplished by recommendation and policy.</p> <p>REPLY</p> |   Sep 23, 2013 |
| <p>Jim Bowles: Establishing a fund would require legislation.</p> <p>REPLY</p> |  Sep 24, 2013 |

- a. A fund to enable them to pay a private provider, or [Legislation](#) 98
- b. VDH design assistance, when a standard design is appropriate. When a standard design is not appropriate, the VDH will deny the application and refer the homeowner to a OSE or PE for design of an alternative system. [Policy](#) 99 [1]

Paragraph 99 [1]

| | |
|--|---|
| <p>Erik Johnston: Need clarification on 98 and 99. Should fund be saved for those that need private sector design of alternate systems and VDH design all standards systems for those who meet means test. Why deny application, instead of referring to private first for alt sys</p> <p>REPLY</p> |  Sep 20, 2013 |
|--|---|

- B. CHARGE 1B: What core functions or tasks can be accomplished by the private sector? Identify the strategies and methods for achieving greater private sector involvement. 100 [1]

Paragraph 100 [1]

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|---|--|
| <p>Jeff Walker: All design for improvements to real property in the Commonwealth is performed by licensed professionals under contract.</p> <p>VDOT abandoned design on private property in 2009; VDH should do same, there is no public benefit for the use of agency resources.</p> <p>REPLY</p> |   Sep 23, 2013 |
|---|--|

- 1. SUBCHARGE 1B1: Investigate ways to encourage or increase private sector input in rural areas. 101
 - a. A public subsidy is appropriate in under-served areas until there is sufficient competition within the private sector. (Providers could be public or private in this model, until competition develops in the private sector.) [2] [Legislation](#) 102 [1]

Paragraph 102 [1]

| | |
|---|---|
| <p>Erik Johnston: This legislation would be difficult to craft fairly for whole state, why not study those rural areas of the state with higher levels of market penetration under current system and replicate these best practices?</p> <p>REPLY</p> |  Sep 20, 2013 |
|---|---|

- 2. SUBCHARGE 1B2: Investigate ways to encourage or increase private sector input for work with repairs. 103 [2]

Paragraph 103 [2]

Sandra Gentry: VDH needs to clarify what needs a permit.

There is a lot of confusion among installers and service providers as to what requires a repair permit. This will become even more critical an issue when/if a repair permit has to be designed by an OSE or PE. The added cost and wait time to repair some simple problems may make it even less likely that these repairs will be done in a timely manner. This does NOT benefit the owner nor the public if sewage continues on the ground when a simple "fix" without a permit could prevent it in hours instead of weeks.

REPLY



Sep 24, 2013

bob marshall: The SHIFT Committee needs to better capture the necessity and importance of measuring the "backlog" reported by local health departments/districts.

Implementation of the Onsite Sewage Quality Assurance Program
October 17, 2007

"The number of administrative denials due to incomplete applications can easily be measured on almost an ongoing basis, as can the number of days required to process bare applications. Meaningful analysis of this information may be done on a monthly basis. Quarterly analysis of Level I reviews of environmental health specialist (EHS) permits may be sufficient, in most districts, to determine whether or not problems exist that need to be addressed on a district-wide, rather than individual, basis."

REPLY



Sep 25, 2013

- a. Arrange for small business development support through the local economic development offices and state Department of Small Business Assistance. [1] [Need more info](#) **104** [3]

Paragraph 104 [3]

Erik Johnston: I agree with this idea. We could recommend that VDH coordinate with private sector and state/federal econ dev programs to increase number of private sector providers in underserved areas.

REPLY



Sep 20, 2013

Bill Sledjeski: agree

REPLY



Sep 23, 2013

Jeff Walker: ultimately there is no market if the subsidy prevents market development.

No SB Development authority would recommend a small business form with the model of competing with an 80% subsidy.

I did a thumbnail sketch of District costs and found that taking the salary of staff (local, + district (0.25) and rent benefits and expenses for electrical, mileage etc. divided by the number of permits issued/year, and cut that in half thinking barely half the work load is attributable to onsite. The result \$2300/site. Current fee is \$425.

REPLY



Sep 23, 2013

- b. Eliminate some formal qualifications (e.g., a degree) for certification, to lower barriers to becoming a private provider. [2] **105** [2]
[Regulation \(DPOR\)](#)

Paragraph 105 [2]

Paragraph 105, Sentence 1 [2]

David Lentz: The current OSE exemption already relaxes requirements otherwise placed on professional engineers. Further relaxation of minimum qualifications is not going to improve the level of service being provided by designers to the public.

REPLY



Sep 24, 2013

Jeff Walker: Agree, the OSE's training knowledge and skills are sufficient to protect the public interests, while

reducing the cost of services.

REPLY



Sep 25, 2013

- C. Incentives must be created to encourage preferential use of the private sector, to encourage the private sector to expand coverage, and to foster an organic shift to using the private sector. **106 [3]**

Paragraph 106 **[3]**

Erik Johnston: Agree!! Focus on encouraging homeowners to use private sector, while still keeping VDH Direct service offerings as option. Do not increase costs for homeowners at VDH. [\[Edited\]](#)

REPLY



Sep 20, 2013

Jeff Walker: Private sector is only viable in markets with greater impediments to service than cost.

impediments include:
 local ordinances or policies,
 restrictions
 time or "backlog"
 qualifications of personnel
 ability to waive regulations or requirements

REPLY



Sep 23, 2013

Jeff Walker: Cost of services is properly borne by the beneficiary.

quality of services are a benefit to neighbors and natural resources- the public, hence the requirement for licensure, and oversight.

REPLY



Sep 25, 2013

- i. Private providers should be encouraged or required to register with counties where they are willing to provide services. **107**
[Legislation](#)
- ii. VDH should make this registration data on PE and OSE providers at the county level available to the private sector to incentivize providers to expand their services into low-service counties. **108**
[Need more info](#)
- d. Begin the shift by focusing on privatizing work in priority areas, particularly: [\[6\] Policy](#) **109 [2]**

Paragraph 109 **[2]**

Erik Johnston: makes sense to encourage greater use of private sector in priority areas, where most likely to be adopted, but still keep VDH direct services in these areas as an option.

REPLY



Sep 20, 2013

Jeff Walker: Currently VDH services do not comply with the OSE or PE law

A lower standard of documentation is a barrier to competition, especially when the plan reviewing administration is able to waive it's own regulations with no 3rd party oversight.

REPLY



Sep 23, 2013

- i. Onsite septic work for subdivision development. **110**
- ii. Certification letter preparation. **111**
- iii. Voluntary upgrades. **112**
- e. Find and share best practices for promoting a viable private sector, from regions where the shift has occurred, to inform areas **113 [1]**

where the shift has not yet occurred. [3]

Paragraph 113 [1]

Erik Johnston: I think this is key to making the shift be acceptable. Incentivize and show benefits of greater private sector involvement. Don't mandate or eliminate public sector option.

REPLY



Sep 20, 2013

II. TRANSITION PROCESS, INCLUDING REGULATORY AND LEGISLATIVE NEEDS 114

A. CHARGE 2A: Identify or recommend the means for an orderly transition. 115

1. SUBCHARGE 2A1: Identify or recommend tactics that may be implemented relatively easily and quickly. 116

a.

2. SUBCHARGE 2A2: Evaluate regional differences, barriers, and triggers that could effect change. 117

a. Establish thresholds for when VDH may no longer do new construction work. [1] [2] [Need more info](#) 118 [2]

Paragraph 118 [2]

Erik Johnston: I oppose this recommendation.

REPLY



Sep 20, 2013

Paragraph 118, Sentence 1 [1]

Sandra Gentry: Transition everything, then evaluate situation for availability of services and VDH return to soil and design work if it becomes obvious that private sector is not available.

I'll send an explanation of this and additional questions to the listserve.

REPLY



Sep 20, 2013

b. Determine the schedule of the shift by region, to address district and locality needs. Develop a schedule with target dates by which VDH would increase its fees, and a schedule for the fee increases. [Need more info](#) 119 [1]

Paragraph 119 [1]

Erik Johnston: I support region specific plans and flexibility and target goals, but not increased fees or target dates that mandate public sector withdrawal. Public sector services should stay an option in all of the state.

REPLY



Sep 20, 2013

3. SUBCHARGE 2A3: Identify or recommend options that appear promising or feasible but require additional study or input. 120

a.

4. SUBCHARGE 2A4: Identify or recommend ideas that require regulatory action by the Board of Health. 121

a.

5. SUBCHARGE 2A5: Identify or recommend legislative changes. 122

- a. A statutory waiver would be needed to allow for lifetime repairs of septic systems, regardless of the soil site conditions, and with certain conditions attached to property transfers. [Need more info](#) **123**

B. CHARGE 2B: How should change be accomplished to minimize unintended consequences and negative impacts? **124 [1]**

Paragraph 124 [1]

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|--|---|
| <p>Jeff Walker: There is no basis for VDH managing competition</p> <p>Only market based solutions will effect change, homeowners select services based upon price, therefore the subsidy is suspected as the main driver of competition.</p> <p>REPLY</p> |  Sep 23, 2013 |
|--|---|

1. SUBCHARGE 2B1: Identify challenges for change and mitigation strategies. **125**

- a. Give advance notice to everyone, especially the private sector, of phased sunset transition dates, to prepare the private sector to take on additional work as VDH reduces its services and to ensure continuity in areas that may currently be underserved by the private sector. [\[2\]](#) [\[5\]](#) [Policy](#) **126 [3]**

Paragraph 126 [3]

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|--|---|
| <p>Erik Johnston: I oppose phased sunset transition dates.</p> <p>REPLY</p> |  Sep 20, 2013 |
|--|---|

Paragraph 126, Sentence 1 [2]

| | |
|---|---|
| <p>Sandra Gentry: If private sector only gets a small piece of the pie at a time, they may not move into underserved areas.</p> <p>This goes back to Lines 109 – 112 also. If only subdivision work is shifted to private sector in an area but all other soil evaluation and design work is still available through VDH, it reduces the incentive for designers to go into an area that has low application rates. If all work is shifted at the same time, there should be more incentive for private people to work in any area.</p> <p>REPLY</p> |  Sep 20, 2013 |
| <p>Jeff Walker: Sandra is correct, markets only develop with stability and fair competition.</p> <p>REPLY</p> |  Sep 23, 2013 |

2. SUBCHARGE 2B2: Recommend or create a reasonable timeline. **127**

- a. Reduce VDH capacity gradually to allow continuity and sustainability while incentivizing the shift to the private sector. [\[2\]](#) A longer lead time will allow a supply of providers to develop. [\[4\]](#) [Need more info](#) **128 [2]**

Paragraph 128 [2]

| | |
|---|---|
| <p>Erik Johnston: I don't think VDH capacity should be reduced. The demand for VDH capacity is not likely to decrease even with greater private sector participation.</p> <p>REPLY</p> |  Sep 20, 2013 |
| <p>Jeff Walker: Evidently VDH can not sustain the subsidy or the staff required to continue this program without new funding.</p> |  Sep 23, 2013 |

REPLY Sep 23, 2013

- i. Increase VDH fees gradually on a schedule to transition VDH out of providing those services that are to be provided by the private sector. [1] [1] This could involve establishing specific targets (e.g., >20%, 30%, 40%). [Legislation](#) 129 [5]

Paragraph 129 [5]

Erik Johnston: I do not support an increase in VDH fees.


Sep 20, 2013

REPLY

Jeff Walker: Homeowners who benefit from subsidy are only 0.1% of electorate. Presumably this is not sufficient to maintain support for taxpayer support.


Sep 23, 2013

REPLY

Jim Bowles: Jeff, would show how you calculated this statistic? "Homeowners who benefit from subsidy are only 0.1% of electorate"


Sep 25, 2013

REPLY

Jeff Walker: Approximately 14,000 permits/year is the basis; with 3,854,489 ballots cast in VA November 2012.


Sep 25, 2013

the percentage of the electorate who benefit from subsidies to the onsite program approaches 00.36%
Forgive me, I exaggerated the actual impact but still can make the point.

REPLY

Paragraph 129, Sentence 1 [1]

Jeff Walker: Legislation will be required to change fees.


Sep 23, 2013

REPLY

- ii. Transition services on a schedule: [4]. The first transition would be soil evaluation, [1] then the second transition would be design services. [1] [1] [Need more info](#) 130 [2]

Paragraph 130 [2]

Erik Johnston: I do not support ending/transition VDH services. I support goal of greater private sector participation through incentives.


Sep 20, 2013

REPLY

Paragraph 130, Sentence 2 [1]

Sandra Gentry: See comment at Paragraph 126 Sentence 1.


Sep 20, 2013

REPLY

- C. CHARGE 2C: Describe other strategies, data, information, or detail as developed through or deemed necessary by the SHIFT stakeholder process. 131

1. VDH should develop a full inventory and map of all systems in the state. **Policy** **132**

a. All information provided by private sector should be submitted to VDH electronically. **Policy/regulation** **133 [5]**

Paragraph 133 [5]

Bill Sledjeski: Good idea but not practical.  Sep 23, 2013

REPLY

Jim Bowles: Bill, I'm really interested in your thoughts about why this is not practical.  Sep 24, 2013

REPLY

Jeff Walker: I support a forms based solution, but in interim could use PDF to submit design and inspection reports.  Sep 24, 2013

DEQ has an interesting platform.

REPLY

Jeff Walker: VENIS is a humongous dysfunctional failure, this might be wherein Bill suggests "impractical"  Sep 24, 2013

Any solution must be fully vetted, and supported by Virginia based firms. To wit: problems with Candian based servers.

Furthermore any solution must provided for compliance with sealing and certifying, there have been issues identifying draft vs. final design.

REPLY

John Ewing: Online Permit is extremely practical.  Oct 9, 2013

There are nothing but practical reasons to make electronic submissions an option for OSE, installers, and OM providers. With a website standardized with vetted regulation clarifications, it would be impossible to submit a non-compliant permit in any county. Such a website could also cover any local requirements, so an OSE not familiar with local ordinances can travel to county to county with confidence.

In some cases permits get revised due to changed conditions to the site. Sometimes the original un-updated permit gets circulated to the well driller and installer. With the online permit, any changes made would be updated and shown on the permit, instantly. An electronic permit could have so much more detail than just a piece of paper can show. Pictures, videos, links to product info., You-tube instructions all can inform an installer or OM provider like never before possible.

An EHS would receive the Online submission and know that at least the information entered was compliant. Of course what actually is occurring on the project property could be non-compliant, just like now, so the EHS could perform a level II review to confirm the submittal. Being freed from having to review every line of a 10 – 20 page document would give the EHS more time in field to perform level II reviews, inspect well grouting, and inspect septic installations. There would also be a substantial saving in paper for both the private professional and VDH.

The detailed electronic permit practicality would end after the completion statement is signed. The permit would go on to be help for O&M and repairs.

The website would also serve the general public in the same way as CARFAX informs people about buying used cars. Any use of an alternative system, repair or proof of regular maintenance would be transparent in a real estate transaction.

The technology for an online permit is 7 to 10 years old. This is not cutting edge stuff, to say the least. I encourage all SHIFT members to become informed on current computer and smart phone technologies to understand how ingrained the technology I am suggesting already has become. It is also important to understand the technologies that are just over the bend to be prepared to keep up with the practical aspects technology can provide.

REPLY

b. There is general agreement that permits should be submitted electronically, which would make both the submission process and **134** the review easier. Online applications might also make it easier for the applicant to know immediately if the application meets the regulations, by virtue of automatized features and parameters. More needs to be discussed about the role of technology. **This is a long-term project**

III. FINANCIAL AND ECONOMIC ISSUES **135**

A. **CHARGE 3A: Identify fiscal impacts to the Department and local governments related to recommended changes.** **136 [4]**

Paragraph 136 [4]

Erik Johnston: I recommend the report to state that all report recommendations should be analyzed and not implemented if they are found to be an unfunded mandate on localities. VDH general fund budget should be increased.

REPLY  Sep 20, 2013

Jeff Walker: Current policy is an unfunded mandate, changes to increase private sector participation takes services off General and local fund columns.

REPLY  Sep 23, 2013

Dr. Charles Devine: Localities do pay through the local cooperative budget to support the cost of providing services not fully paid for by fees.

REPLY  Sep 24, 2013

Jeff Walker: LGA is a funding mechanism; many counties expect services in support of planning or permitting beyond BoH requirements.

I'm interested in learning more about funding and services, this was a topic at SHADAC.

REPLY  Sep 24, 2013

1. There is general agreement that resources are needed to facilitate the transition and program funding. **Need more info** 137
- B. **CHARGE 3B: Identify the economic impact to those who receive direct services (i.e., private citizens, local governments, septic contractors, and other stakeholders).** 138 [2]

Paragraph 138 [2]

Bill Stedjeski: Minimal to all.

The total cost of septic system evaluation/design/review is minimal compared to total cost of system and house construction, related engineering, surveying and design services.

REPLY  Sep 23, 2013

Jeff Walker: Consider sewer connection fees, ranging from \$500 to >\$7000 onsite can be a more effective option.

Data may be found at:
<http://www.daa.com/publications/dashboard/>

For example look at Berryville; Connection fee with Capital recover fee exceeds \$25k

REPLY  Sep 23, 2013

1. **SUBCHARGE 3B1: Describe anticipated or possible financial impacts to low and moderate income property owners with additional privatization of direct services.** 139
 - a. There will be financial impacts when owners have to use the private sector, and this will pose a problem of access in certain areas, at least in the short term. 140 [2]

Paragraph 140 [2]

Erik Johnston: this assumes full privatization. Why not study methods that will minimize costs for homeowners by decreasing costs for private sector providers and maintaining VDH direct service role.

REPLY  Sep 20, 2013

Jeff Walker: Disagree; the cost belongs to those that benefit, not the tax payer.

REPLY  Sep 23, 2013

2. **SUBCHARGE 3B2: Describe strategies to reduce any possible impact to low or moderate income owners.** **141**

a. Charge for repairs for high income to subsidize low income. [5] [Legislation](#) **142** [1]

Paragraph 142 [1]

| | |
|---|---|
| <p>Bill Sledjeski: Disagree</p> <p>REPLY</p> |  Sep 23, 2013 |
|---|---|

3. **SUBCHARGE 3B3: Address supply and demand to ensure reasonably priced services can be provided as housing market conditions change or improve.** **143**

a.

4. **SUBCHARGE 3B4: Describe how changes in the housing market could affect the demand for services and the ability to provide timely services.** **144** [1]

Paragraph 144 [1]

| | |
|---|---|
| <p>Bill Sledjeski: Supply and Demand</p> <p>This should not have a substantial impact on either the private or public sector. I've gone through several peaks/valleys in the market and all participants have been able to adjust</p> <p>REPLY</p> |  Sep 23, 2013 |
|---|---|

a. Need to address contingency that continued depressed building rates might mean no increase in work for OSEs despite discontinued VDH involvement [Need more info](#) **145**

5. **SUBCHARGE 3B5: Discuss ideas to reduce financial impacts from bad outcomes, such as the early failure of an onsite sewage system.** **146**

a.

C. **CHARGE 3C: Identify funding needed to implement SHIFT stakeholder group recommendations.** **147**

1. **SUBCHARGE 3C1: Identify ways to improve or change the Department's fee structure to help increase privatization of direct services.** **148** [3]

Paragraph 148 [3]

| | |
|--|---|
| <p>Erik Johnston: I'm interested in learning more about fee structure ideas, I don't support mandated increased fee structure, but interested in exploring keeping current fees and giving local health dept option to raise fees.</p> <p>REPLY</p> |  Sep 20, 2013 |
| <p>Bill Sledjeski: Agree</p> <p>Fee structures may change but I see no reason why funding should change</p> <p>REPLY</p> |  Sep 23, 2013 |
| <p>Jeff Walker: Agree, fees vary by locality and reflect local requirements. [Edited]</p> <p>Fees should recover costs of services.</p> <p>REPLY</p> |  Sep 24, 2013 |

- a. VDH will need to raise fees to make up for the loss of bare applications. [2] [1] [Legislation](#) 149 [2]

Paragraph 149 [2]

[Paragraph 149, Sentence 1 \[2\]](#)

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| <p>Bill Sledjeski: Not Likely</p> <p>Reduced time required for processing bare application evaluations and designs should equal lower VDH cost.</p> <p>REPLY  Sep 23, 2013</p> |
| <p>Jeff Walker: Onsite design requires open ended commitment since each site has unique restrictions. Some sites require 1 day, others may require a week, there is no one size fits all fee.</p> <p>Ultimately a landowner is responsible for the cost of development. Some land is easier than other examples to permit; why should government policy benefit landowners with poor (read cheaper) land?</p> <p>REPLY  Sep 23, 2013</p> |

- b. Options to support new VDH inspection staff and timely inspections turnaround: 150
 - i. VDH should charge one inspection fee at issuance of operating permit [Legislation](#) 151
 - ii. VDH should charge separate fees for each function (reviews and inspections) [2] [Legislation](#) 152
 - iii. VDH should charge one upfront fee at issuance of (construction) permit [Need more info](#) 153
- c. Question: Does a reduced VDH role mean reduced fees [1] or reduced agency liability [1] 154
- d. Increase discrepancy between public and private to incentivize private sector [Legislation](#) 155
- e. Create board of equalization to equalize fees for services – VDH charge same basic rate as private sector in choice model [Legislation](#) 156
- f. Do away with special fees and return to mandated fee structure, then restore general funds [Legislation](#) 157
- 2. SUBCHARGE 3C2: Identify short and long-term funding needs to sustain the Department’s implementation of core functions. 158
 - a. VDH staff working on septic/water funding – who are involved in interagency cooperation – should identify existing and potential funding sources and effectively act as ombudsmen within and outside of program [Need more info](#) 159
 - b. VDH should retain any savings from shift for parts of state that need O&M help [Need more info](#) 160
- 3. SUBCHARGE 3C3: 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. 161 [2]

Paragraph 161 [2]

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| <p>Erik Johnston: Local flexibility is good idea, but locality must be a driver in any local policy changes.</p> <p>REPLY  Sep 20, 2013</p> |
| <p>Jeff Walker: reviewing privatization by District we can understand that localities have suppressed private designers by</p> |

various means.
REPLY  Sep 23, 2013

- i. New construction should be completely privatized – septic is small portion of overall construction cost and less of an argument for using public funds **Need more info** 162 [4]

Paragraph 162 [4]

Erik Johnston: I do not agree with this idea.
REPLY  Sep 20, 2013

Bill Sledjeski: Isn't this the aim of SHIFT?
REPLY  Sep 23, 2013

Jeff Walker: design is rarely 7% of cost of construction; septic is barely 10% of home construction cost.
Do other design or construction sectors have price ceilings?
Legal and surveyor fees are unregulated, despite relatively low numbers of practitioners in many communities. There is no parallel to VDH offering subsidized design services for new construction, especially with new home costs ranging from \$120k to \$5M+
REPLY  Sep 23, 2013

Jeff Walker: why should design (or construction) cost be born by taxpayer?
REPLY  Sep 23, 2013

4. SUBCHARGE 3C4: Investigate the possibility of creating a fund or expanding the betterment loan program. 163

- i. Homeowner who can't afford a system should have access to assistance fund [4] [Legislation](#) 164 [1]

Paragraph 164 [1]

Bill Sledjeski: Maybe
If the homeowner qualifies for system installation assistance then should also qualify for site evaluation and design (VDH? or funding for private sector.)
REPLY  Sep 23, 2013

- a. Model after SERCAP's relief fund 165
- ii. Indemnification fund 166
 - a. Allow private sector to access indemnification fund [2] [Legislation](#) 167 [3]

Paragraph 167 [3]

Bill Sledjeski: Disagree
Private sector should maintain E and O insurance however if Level I and II has been implemented then VDH has role

in this issue.
REPLY 
Sep 23, 2013

Jeff Walker: I second Bill's comment
REPLY 
Sep 23, 2013

Jeff Walker: Applications supported by OSE (Consultant) also pay this fee, though w/out coverage.
REPLY 
Sep 23, 2013

- b. Transfer indemnification fund to septic relief fund [Legislation](#) 168 [1]

Paragraph 168 [1]

Jeff Walker: The IF has been used for many off program purposes. It would be useful for the fund balance to benefit the folks who paid these fees.
REPLY 
Sep 23, 2013

- iii. Portion of fees goes to repair fund [Legislation](#) 169
 - iv. Insurance pool/backstop "vaccine" model [Legislation/need more info](#) 170
5. **SUBCHARGE 3C5: Investigate the possibility of supporting the Department with greater general fund revenue.** 171 [1]

Paragraph 171 [1]

Erik Johnston: support
REPLY 
Sep 20, 2013

IV. **OTHER** 172 [5]

Paragraph 172 [5]

John Ewing: Ensuring private OSE's are around through the good and bad times. 
I suggest policies should be in place to promote OSE's to obtain installer and operator licenses. I can say for certain, I would not be here doing this work today if it were not for my ability to work as an OSE, installer, and operator. Diversifying my company's services gave us strength during the economic downturn. I also emphatically believe the experience I have had working in all three aspects of onsite septic systems make me a better professional, overall. Taking full responsibility is a rarity in our profession. When I design a system that I install and maintain, I am in it for the long haul. I am going to make sure to the best of my ability that my systems won't cause me any embarrassment down the line when I am working for the homeowner as their maintenance provider. I think that a person that holds all three licenses for 6-10 years should be given a special Master Onsite Professional License. The main perk for the professional would be one license to maintain. I think the CEU requirement for this special license should include required speaker/teaching hours to promote the sharing of hands on knowledge. Moreover, there should be special CEU consideration given to all onsite septic professionals that speak to kids in our public schools and even more consideration when the school is especially challenged. Our profession has come a long way to accept woman into the ranks. There are still obvious barriers to many cultures in our industry. Public health knows no culture barrier. We all benefit from including everyone into the conversation. I think onsite professionals that reach out to include people of different socio-economic backgrounds should be encouraged and rewarded.
REPLY Oct 9, 2013

Jeff Walker: Thanks for re-awakening this forum. Introducing a master Onsite license would alleviate/remedy. shortage of professionals

| | |
|--|---|
| <p>with allied experience. [Edited]</p> <p>The exclusion of designers and installers from qualifying to take operator exam is a barrier to resolution. In southwest VA, perhaps other regions there are few licensed operators, the entrance is restricted due to the exclusive regulations which require classes which don't exist. w/in the region, or accessible schedule. VOWRA has been active in increasing training options, Blackstone (Community College) also offers training.</p> <p>REPLY</p> |  Oct 10, 2013 |
| <p>Jeff Walker: Agree on diversification, also on need for economic survival in shrinking economies. However need to focus on service to citizens and support of Licensure by all professionals. Allegations and sniping have torn down our profession.</p> <p>OSE must refrain from commenting upon other professionals practices unless directly involved. There is no room for hearsay, particularly in competing for projects. Professionals must stand on the basis of providing services, that alone qualifies for taking on a client.</p> <p>REPLY</p> |  Oct 10, 2013 |
| <p>Jeff Walker: Like this comment; CEU's are offered by conference (VAPSS/VOWRA) by Community Colleges, and other organizations. There is provision for CEU credit for offering training.</p> <p>REPLY</p> |  Oct 10, 2013 |
| <p>John Ewing: Lecture CEU's a requirement</p> <p>For the Master license I meant to say lecture/teaching CEU's would be a requirement, not an option. The knowledge of a Master Onsite Septic Professional is not the kind of knowledge that is found in a college course. We need to make sure such special knowledge is passed on the the next generation.</p> <p>REPLY</p> |  Oct 11, 2013 |

A. **CHARGE 4A: Analysis should include the E.L. Hamm study from 2006 and the HB2185 study. Are these studies still reflective of stakeholder opinions and views?** 173 [3]

Paragraph 173 [3]

| | |
|---|---|
| <p>Erik Johnston: These studies include a lot of ideas and suggestions. It is difficult to provide comment on all of this. I don't think our report should vote yes or no on these studies.</p> <p>REPLY</p> |  Sep 20, 2013 |
| <p>Bill Sledjeski: Agree</p> <p>REPLY</p> |  Sep 23, 2013 |
| <p>Jeff Walker: Hamm was a more comprehensive study than RD32, which is seriously flawed and unduly influenced by anonymous and vested interests.</p> <p>REPLY</p> |  Sep 23, 2013 |

General Document Comments [0]

Meeting #4 Handout: Pennsylvania Code § 72.41. Powers and duties of sewage enforcement officers

§ 72.41. Powers and duties of sewage enforcement officers.

(a) A sewage enforcement officer has the power and duty to issue, deny and revoke permits, and to take all other actions necessary to administer and enforce section 7 of the act (35 P. S. § 750.7), except that a sewage enforcement officer may not conduct hearings under section 16 of the act (35 P. S. § 750.16).

(b) A sewage enforcement officer shall issue permits only within the jurisdiction of the local agency in which the sewage enforcement officer is employed. When a sewage enforcement officer encounters a conflict of interest as specified in subsections (f)—(k), the local agency shall employ a certified sewage enforcement officer not having a conflict of interest regarding the system or lot.

(c) The local agency shall notify the sewage enforcement officer and the Department in writing of the specific conditions of employment, including, but not limited to, the following:

- (1) The geographic boundaries.
- (2) The specific permit applications to be processed.
- (3) The rate of compensation to the sewage enforcement officer.
- (4) The duration of employment.

(d) A sewage enforcement officer shall accept payment only from the local agency for services performed in conjunction with administration of the act.

(e) A sewage enforcement officer shall only accept an application or other processing fees for the local agency under the following conditions:

- (1) The fee is in the amount prescribed by the local agency's adopted fee schedule.
- (2) The fee is rendered in accordance with the local agency's adopted receipt system as required by § 72.42(a)(7) (relating to powers and duties of local agencies).
- (3) The sewage enforcement officer has received written direction from the local agency to accept these fees on behalf of the local agency.

(f) A sewage enforcement officer may advise an applicant regarding available options for the planning, design and construction of an individual or community onlot disposal system, but may not select the final system design, as specified in subsection (g) except as provided by subsection (i).

(g) A sewage enforcement officer may not plan, design, construct, sell or install an individual or community onlot sewage system within the geographic boundaries of the sewage enforcement officer's authority, as specified by the local agency.

(h) A sewage enforcement officer may not, orally or in writing, suggest, recommend or require the use of any particular consultant, soil scientist or professional engineer, or any individual or firm providing these services where these services may be required or are subject to review under this

article.

(i) A sewage enforcement officer may not perform consulting or design work or related services required or regulated under the act within the municipality or local agency by which the officer is employed or with which the officer has a contractual relationship unless the services are set in the fee schedule of the local agency, the fees are paid directly to the local agency and the records and products relating to consultation or design work are reviewed by and any subsequent permit is issued by another sewage enforcement officer employed by or under contract with the same local agency.

(j) A sewage enforcement officer may not conduct a test, issue a permit, participate in the official processing of an application or official review of a planning module for an individual or community onlot sewage system in which the sewage enforcement officer, a relative of the sewage enforcement officer, a business associate of the sewage enforcement officer or an employer of the sewage enforcement officer, other than the local agency, has a financial interest.

(k) For purposes of subsection (j), a financial interest includes full or partial ownership, agreement or option to purchase, leasehold, mortgage or another financial or proprietary interest in; or serving as an officer, director, employe, contractor, consultant, or another legal or fiduciary representative of a corporation, partnership, joint venture or other legal entity which has a proprietary interest in one or more of the following:

(1) One or more lots to be served by the system.

(2) The development or sale of the lots to be served by the system.

(3) A contract, either written or oral, to perform a service in the development of one or more of the lots to be served by the system. The service may be before or after the fact of development and may include professional as well as other services.

(4) A contract, either written or oral, to sell, plan, design, construct, install or provide materials or component parts for the system.

(l) Prior to issuing a permit, the sewage enforcement officer shall conduct personally, observe or otherwise confirm in a manner approved by the Department all tests used to determine the suitability of a site for an individual or community onlot sewage system. A sewage enforcement officer shall accept testing conducted by a prior sewage enforcement officer for the local agency provided the site, data and prior testing meet the criteria specified in § 72.26(b)—(d). When a sewage enforcement officer accepts testing by a prior officer, a copy of the Department's "Verification of Prior Testing" form or other form as may be specified by the Department, shall be attached to each copy of the permit application.

(m) Prior to issuing a permit, the sewage enforcement officer shall confirm that the application is complete and that the proposed system design is in compliance with the requirements of the act and this part.

(n) The sewage enforcement officer shall give timely written notice to applicants or permittees of approval, denial or revocation of a permit under this chapter.

(o) The sewage enforcement officer shall advise the local agency of a violation of the act or this part, known to the sewage enforcement officer, which occurs within the local agency's jurisdiction.

(p) The sewage enforcement officer shall advise the local agency of its responsibility to restrain a violation of the act or this part and shall independently take action within the scope of his authority necessary to restrain or correct the violation.

(q) The sewage enforcement officer shall submit the Department's copy of the completed Application For Sewage Disposal System, with necessary attachments, within 7 days of acting upon the application.

Authority

The provisions of this § 72.41 amended under sections 7.2 and 9 of the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.7b and 750.9); The Clean Streams Act (35 P. S. §§ 691.1—691.1001); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 72.41 amended November 1, 1996, effective November 2, 1996, 26 Pa.B. 5347; amended November 7, 1997, effective November 8, 1997, 27 Pa.B. 5877. Immediately preceding text appears at serial pages (221888) to (221890).

Cross References

This section cited in 25 Pa. Code § 72.43 (relating to powers and duties of the Department).

VDH SHIFT Stakeholder Advisory Committee Meeting

October 31, 2013 | 10 a.m. – 2:00 p.m.
Department of Forestry, Charlottesville, Virginia

Meeting #5 Summary

Facilitated by the Institute for Environmental Negotiation

Executive Summary

The SHIFT Stakeholder Advisory Committee has been tasked by the Virginia Department of Health with producing a report of recommendations on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment. The committee met for the first time in July 2013. This document is a summary of the fifth SHIFT Stakeholder Advisory Committee meeting, held in late October. During this meeting, participants discussed draft recommendations, reviewed the results of a survey-based consensus document, and tested for consensus on a number of proposed recommendations. The committee reached consensus on six recommendations and discussed the potential for a number of other recommendations.

As of the date of this draft meeting summary, a decision had not been made on whether to hold another in-person meeting of the SHIFT Stakeholder Advisory Committee.

Welcome Back & Introductions

Forty-six people met at the Department of Forestry Building in Charlottesville, Virginia, on October 31th for a VDH Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee meeting. Tanya Denckla Cobb, Frank Dukes, and Kelly Wilder from the Institute for Environmental Negotiation (IEN) at the University of Virginia facilitated the meeting. This was the fifth in a series intended to lead to consensus recommendations concerning the future of the onsite septic program in Virginia, with the hopes of maximizing private sector involvement in the new program to the greatest extent possible.

After welcoming group members to the meeting and providing time for meeting participants to introduce themselves, Tanya took a few minutes to review the SHIFT process. She explained that the SHIFT Stakeholder Advisory Committee has gone through a traditional consensus building process, including identifying key issues of importance to the stakeholders, and developing and narrowing ideas for possible recommendations. IEN worked with committee members over the last month to further narrow the proposals to 31 draft recommendations, then conducted an initial online test for consensus on these draft proposals. The purpose of this meeting, therefore, is to first build consensus on proposals that the initial consensus test

indicated were strongly supported, and then to move forward with building consensus on the remaining draft proposals.

Frank then reviewed the ground rules set by the committee during the first SHIFT meeting. He mentioned the importance of honoring the time people have spent on this initiative, both during and outside of the group meetings. He urged the group to assume that committee members are participating in good faith, and noted that groups that are able to do so are usually more successful in building consensus. Finally, Frank reflected on comments that IEN has received about the SHIFT goals, noting that the goal is not about “privatization” but is more accurately about identifying what the private sector does best and finding ways to help it do more of this work, and also identifying what the public sector does best and finding ways to help it do more of this.

Tanya then asked that everybody check to ensure that they have all the latest meeting handouts, including the meeting agenda, the public comment print-outs, and the survey results handout, and introduced the agenda, which included time for:

- Welcome Back & Introductions
- Building Consensus on Proposals with Greatest Support
- Building Consensus on Other Key Issues
- Public Comment
- Meeting Wrap-up

Building Consensus on Proposals with Greatest Support

The majority of the meeting time was spent on discussing and testing for consensus on the draft recommendations that were most supported in the committee survey. To ensure that the committee would have enough time to discuss each widely-supported proposal, Tanya explained that the group would use a “Rapid Needs Assessment” process to provide a structure for approaching each discussion. The rapid needs assessment worked by allotting ten minutes per proposal. First, committee members who were unable to live with the proposal would express their concerns and share how the proposal could be changed to enable them to live with it. Then the group would be asked how it might address the expressed concerns. If no consensus was reached in the ten-minute allotment, the group would put that proposal aside and move on to the next one.

Tanya announced that there were four proposals on which, according to the online test for consensus, the committee had already reached consensus. Additionally, there were six proposals on which that the group was close to reaching consensus, meaning that only three or fewer committee members were unable to live with the proposal. As detailed below, the rapid needs assessment focused on these ten proposals.

Tanya then explained that, although ten proposals were close to consensus, there also were many others that were not close to consensus. She noted that many of the barriers to consensus on these remaining proposals reflect deeply held values, and that value-based conflicts are known to be the hardest types of conflicts to resolve and need the most work. She acknowledged that, because of this, there are some issues that the group might not be able to resolve. Because the IEN cannot make people agree, the goal of reaching consensus recommendations would require committee members to work together to find solutions and to identify where the barriers remain so that more work may be done in the future. Tanya further clarified that if the group detoured into conversations that had been previously addressed during the process, the facilitators might intervene and urge the group to move onto new ideas.

Before starting, she gave the floor to the VDH to update the committee on its internal discussions. Dwayne Roadcap explained that the VDH has been going through its own parallel internal discussions with staff from all Health Districts, to discuss ideas and options developed by the SHIFT committee. Based on the first four SHIFT meetings, the VDH has decided that there are two specific changes it can make to address stakeholder concerns, regardless of the outcome of the SHIFT process. First, to level the playing field and eliminate concerns about different standards for the private sector, the VDH now plans to start the process of equalizing work product expectations. Second, to encourage people to use the private sector where possible, the VDH is prepared to develop a consistent policy for local Health Districts to disclose the limitations of their staff capacity and to encourage the use of the private sector. The details of both policies have yet to be worked out, and the VDH will welcome input. One member suggested that VDH work closely with DPOR to ensure that alignment of the work product expectations will not lead to a lowering of professional standards.

The following rubric was used during the tests for consensus online and during the meeting:

- 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.

Rapid Needs Assessment

Online Proposal 20 – Review Documentation: All Level 1 and 2 reviews will be documented with standard VDH forms. Copies of all official documents shall be sent to the OSE/PE after the review has been completed.

Consensus reached

Concerns:

One committee member indicated that he gave the proposal a “1” on the online consensus test, but he clarified that he was not actually opposed to the proposal and retracted his “1.”

Test for consensus:

Since no further discussion was needed, Tanya moved to test for consensus. The committee reached a strong consensus for Proposal 17, with a tally of nineteen 3’s, one 2, zero 1’s, and one abstention.

Online Proposal 3 – Emergency Repairs: VDH must be able to provide soil evaluation/design in the event of an emergency, when emergency repairs are needed.

No consensus reached

Concerns:

Two committee members gave this proposal a 1 online. Both of these members indicated that they wanted further clarity about what constitutes an “emergency,” and several other members expressed the same concern.

Discussion:

In order to clarify what constitutes an emergency, other members of the group offered that the standard definition for emergency in VDH policy be applied. These criteria were described as:

- A system malfunction that endangers public health.
- A system failure where sewage is surfacing or where the system is backing up.
- A situation that could lead to pollution of groundwater.

After clarifying what potential criteria could be used for defining an emergency, Tanya asked the group if the assembled criteria were sufficient to raise the concerned member’s votes from a 1 to a 2. They expressed that they were not sufficient for the following reasons:

- There is a possibility that this proposal will force a permit for construction or repair without considering all the variables (because many times the problem would involve an operation and not a design problem).
- Not all repairs should qualify for free emergency service.
- There is a lack of clarity about the responsibility of the VDH to handle repairs immediately, without considering the capacity of the private sector to accommodate the repairs.

- The proposal didn't distinguish between systems that are failing because they are past their life expectancy and systems that are failing for other reasons.

Other committee members expressed surprise at these concerns, as the private sector handles these problems anyway, and the proposal simply means that the VDH must retain the capacity to do the repairs, not that they must do the work.

By the end of ten minutes, there remained a number of concerns about the proposal and no consensus was reached, although there was a sense that the committee might not be far from consensus if sufficient qualifiers could be attached to the proposal. It was suggested that members would discuss the language of the proposal at a later time, and could then reconsider testing for consensus on it.

Online Proposal 18 – Work Product Expectations: VDH should implement a policy as soon as possible that requires VDH and private sector work to meet the same work product expectations, including:

- a. Cover page
- b. Certification statement
- c. Scaled drawings and site plans
- d. Labeling of license
- e. Review of work
- f. Pump curves and specifying name brands, or not doing pump systems
- g. Substituted system
- h. Disclosures and disclaimers
- i. Level 1 and Level 2 reviews (see below for more)
- j. Alternative designs
- k. Survey plat

Consensus reached

Concerns:

Two committee members gave this proposal a 1 online. One of these members expressed that he supports the main idea of aligning work products, but believed that the SHIFT committee probably shouldn't get into the specifics of what the VDH could and should align. The other member was concerned that the cost of implementing this proposal could be extremely burdensome on the VDH, and agreed that as long as the work expectations are the same, VDH should have the freedom to specify in detail how to handle the specific alignments.

Discussion:

A few committee members expressed that this proposal is essential because it is desirable for the VDH to have the same work expectations as professionals in the private sector. It was mentioned that the specific alignments described in items a to k are only a guide for what the VDH could implement, and that perhaps they should be removed from this proposal altogether.

Test for consensus:

The committee voted on an amended version of this proposal, with items a to k removed, and reached a strong consensus for Proposal 15, with a tally of twenty-two 3's and one 2.

Online Proposal 29 – Other Funds: The VDH should explore the potential use of other funds to assist low-income citizens, such as the Department of Community Development's Indoor Plumbing Fund, which may also be available to assist people with new systems.

No Consensus reached

Concerns:

Two people gave this proposal a 1 online. One of these members retracted his objection, but expressed that this proposal isn't truly something that involves the Health Department. The other commented that the proposal has no restrictions against using the funds to support development in areas that aren't truly affordable.

Discussion:

The committee discussed options for changing the proposal to resolve the concerns expressed. The following ideas and questions were shared:

- Would the proposal be better if it considered making funds available only for repairs in existing areas? This idea was met with some support.
- It's important that the proposal clearly state what "people" and what "work" it is talking about.
- One member expressed that if a repair is defined as work on an existing system, there are nuances that could prevent certain important work from being done. For example, repairing an outhouse system with a septic system is beneficial, but could be considered a new installation instead of a repair, which would then not qualify for this fund. One committee member responded, saying that he has no problem with offering repairs on existing housing.
- Perhaps the fund should be available only people that qualify for low-income assistance ("Section 8")?
- One member asked about why it would not be okay to use public money for new development, when money from a private fund would be accepted.
- New language was suggested, changing the end of the recommendation to say "to assist people with new septic systems, repairs to existing systems, or upgrades to existing systems not associated with new building construction."
- A committee member suggested VDH return to a prior practice of risk-based assistance.

Test for Consensus:

The proposal language was amended to read:

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

After settling on new language for the proposal, the group tested for consensus. Two members were unable to support the proposal, and consensus was not reached on Proposal 29. The members who gave the proposal a 1 indicated that the language still was not adequately clear and that the newly phrased proposal wouldn't provide funds to help impoverished people with building their new systems. He thought that there was a reason for including that clause in the proposal originally, and disagreed with taking it out.

One member voiced that this proposal is not relevant to the SHIFT group at all, and moved to table the discussion. A number of other members seconded this sentiment. In response, Tanya explained that this proposal was important to some people, and that, although the committee needed to move to the next proposal, members were welcome to talk about new language options during lunch and suggest changes to the group later in the meeting. Otherwise, the proposal would be dismissed.

Online Proposal 22 – Internal Policy: The VDH policy (GMP 51) must be revised to reflect the new proposed model.

Consensus reached

Concerns:

Three members gave this proposal a 1 online. However, all three retracted their concerns.

Test for consensus:

Since no further discussion was needed, the group moved to test for consensus. The committee reached a strong consensus for Proposal 22, with twenty-two 3's and one 2.

Online Proposal 10a – Encouraging Options: VDH should implement a statewide policy as soon as possible that applicants be encouraged to use the private sector for the above construction services. Possible strategies: a. Threshold Strategy: Site evaluations and designs for all systems with an estimated volume of >1,000 gallons per day will be done by the private sector.

Consensus to drop the proposal

Concerns:

Three members gave this proposal a 1 online. One member retracted his objection. Another member expressed that the proposal language needs to be made more specific. The last objecting member reported that his constituency was not comfortable with completely eliminating the option of being able to use VDH.

After hearing the concerns, one member made a point of clarification stating that this proposal is not relevant because OSEs cannot handle work over 1,000 gallons a day. With that clarification, the group voted unanimously to drop the recommendation.

Online Proposal 2 – Regulatory Oversight: VDH must provide regulatory oversight, which includes all duties that do not require a license. More specifically, VDH will conduct

inspections, manage policy, draft and issue operating permits, maintain and manage records and data.

Consensus reached

Concerns:

No objections were expressed online.

Test for consensus:

Since no further discussion was needed, the group moved to test for consensus. The committee reached a strong consensus reached for Proposal 2 with twenty 3's and two 2's.

Online Proposal 10b – Encouraging Options: VDH should implement a statewide policy as soon as possible that applicants be encouraged to use the private sector for the above construction services. Possible strategies: b. Educational/Disclosure Strategy: VDH should provide educational materials to applicants outlining the limits of VDH services and encourage applicants to obtain private services.

Consensus reached

Concerns:

No objections were expressed online.

Test for consensus:

Since no further discussion was needed, the group moved to test for consensus. The committee reached a strong consensus for Proposal 10b, with twenty-one 3's and one 2.

Online Proposal 10c – Encouraging Options: VDH should implement a statewide policy as soon as possible that applicants be encouraged to use the private sector for the above construction services. Possible strategies: c. Service Provider Strategy: VDH should provide/make available to consumers the names and contact information of private sector providers willing to provide work in that Health District (through a mechanism such as website or roster containing data from DPOR).

Consensus reached

Concerns:

No concerns were expressed online.

Discussion:

The following ideas and concerns were expressed by members of the committee during the time for discussion:

- How will the guidelines for this list be made and how will the list be updated?
- There needs to be more clarity. Are these proposed lists going to exclude the public sector folks who work for VDH?
 - Answer: It will only list private sector.

- The private sector should handle the list. It would be great to be able to refer people to a website with the list, but the public sector should not be responsible for managing the list.

Test for consensus:

The committee reached a strong consensus for Proposal 10c with nineteen 3's and five 2's.

Online Proposal 21 – Reporting: The VDH must have clear/transparent reporting. The VDH QA/QC must be revised to address the newly proposed model.

Consensus reached

Concerns:

No concerns were expressed in the survey.

Discussion:

The following ideas and concerns were expressed by members of the committee during the time for discussion:

- What is the model that we're using for this recommendation?
- If we change the model substantially, this recommendation will have to change.
 - Whatever changes to the septic program are made, the policy needs to reflect it.
- Suggested new language that the second sentence be revised to "for any changes to existing practices, the VDH QA/QC must be revised to address the newly proposed model."

Test for consensus:

Using the new proposed language, the committee reached a strong consensus for Proposal 21 with eighteen 3's and four 2's. The final proposal reads:

- **Reporting: The VDH must have clear/transparent reporting. For any changes to existing practices, the VDH QA/QC must be revised to address the newly proposed model.**

Building Consensus on Other Key Issues

After addressing the proposals with the greatest support, Tanya proposed opening up the meeting time to requests for discussion about proposals in need of a 10-minute rapid needs assessment. One committee member suggested discussing Online Proposal 11.

Online Proposal 11 – "Once Touched" Strategy – Mandated OR Encouraged:

- a. Mandated Strategy: If a site has ever had a site evaluation/design by the private sector, VDH should no longer accept a bare application for that site and should require that applicant to submit private sector work.
- b. Encouraged Strategy: For lots previously privately evaluated, applicants should be encouraged to contact the original private entity to discuss advantages and

disadvantages of utilizing them to produce the design. Applicants would be informed of their choice to (1) use the original information on file and the original or another private evaluator or (2) use the VDH, while understanding that the system designed by someone other than the original evaluator could be substantially different from what was preliminarily proposed. This places no mandate on applicants but helps them understand their options, educates them on the process, and encourages them to seek the advice of original private sector entity.

- c. Corollary to the “Once Touched” Encouraged Strategy: If VDH produces designs for new construction permits, it must conduct and fully document its own independent soil/site evaluation as the basis for its design. VDH personnel would be prohibited from using private sector evaluations as the sole basis for producing designs for new construction permits. (i) This would not prohibit VDH from using the exact location as the private sector proposed for the system. However, VDH would make it clear to their staff that no responsibility for the functioning of any system designed by VDH in a site previously proposed by a private sector evaluator will rest with the private sector evaluator. (ii) This provision is not intended to prohibit VDH from performing proper oversight. VDH staff should be encouraged to file a complaint with DPOR if the findings of their independent evaluation yield significantly different results from the private sector.

Discussion:

The following ideas, concerns, and questions were expressed during the ten-minute discussion time allotted for Proposal 11.

- We shouldn’t restrict people to using only the “original” private entity. For the most part, people simply choose to use the same provider. But times change and things happen so people should be able to pick another.
- Perhaps it would be okay to remove the “original” word but to keep the “private” part of the proposal. Change the language from “the original private entity” to “a private entity.”
- A bare application is one that is submitted without privately provided soil evaluation data. If there is a permit request for an area with soil evaluation data, then it shouldn’t be treated as a bare application. Need to add “certification letter” considerations in the recommendation somewhere.
 - Part of the question here is about how to define a bare application. In order for the request to not be treated as a bare application, you need to have the paperwork that matches what you’re asking for exactly.
- Why are we creating a scenario where the state is becoming liable for a project based on someone else’s work? People with a license are responsible for their own actions, regardless of their employers. It would be best to take out part two of the recommendation.
- Strike part two and take out “the original information on file and.”
- Clarified that we need to do a, b, or c – but not all three – because they conflict with each other.
- The proposal needs to be worded in a language that can be understood.

- How can a designer be sure that the VDH is or is not using the data provided by the private sector? The certification letter is considered supporting documentation, so if a property has a certification letter it is considered “touched.”
- Keep a, strike b, and keep c.
- Soil evaluation and certification letters done by the private sector and accepted by the government could be on file. If someone comes into the department with the certification letter and asks to turn it into a construction permit, they can, because the letter itself is replaced in order to become part of the design work.
- Parts a and c together could make a good proposal.
- Part c should be removed.
- This proposal needs to contain consideration for repairs vs. new systems.
- It’s important to preserve choice. Part a should not be supported as a mandate, but the encouraged strategy proposed in b could be OK.
- Has the Home Builders Association had any problems in the areas where this type of program has been working in the past year?
 - Answer: There haven’t been any problems.
- Is this issue a problem for the people in the business?
 - Answer: Yes this is a problem.
- In terms of liability, soil, design, and usage are what make a system work. If someone does the design for a soil assessment completed by someone else, but in a different way than the original worker would have done it, the original is liable for the soil, but how could he be liable for the outcome of a system he didn’t design?
- It is best practice that if you initially go with the private sector you should stick with that. But it cannot and should not be mandated.
- The mandated strategy can’t be supported, but an encouraged strategy could be.
- Tanya asked if it would be worth changing b (the encouraged strategy) and then testing for consensus on that?
- Members wondered why this recommendation is so complicated. Maybe this proposal should just be removed?
- A proposal was made to eliminate the encouraged and mandated categories and make it all fall under a slightly-revised “once touched” strategy:
 - **For lots previously privately evaluated, applicants should be encouraged to contact a private entity to discuss advantages and disadvantages of utilizing them to produce the design. Applicants would be informed of their choice to (1) use the original information on file and the original or another private evaluator or (2) use the VDH, while understanding that the system designed by someone other than the original evaluator could be substantially different from what was preliminarily proposed. This places no mandate on applicants but helps them understand their options, educates them on the process, and encourages them to seek advice of a private sector entity.**

Test for consensus:

With the new language above set, the group tested for consensus on 11b. No consensus was reached for Proposal 11b with seven 3's, eight 2's, and six 1's.

It was mentioned that the principle behind the "once touched" strategy seems to be widely supported and that there might be a way forward on this proposal, pending revised language and discussion of details.

Online Proposal 16 – Online System: To enhance the state's record keeping and tracking capacity, VDH should develop an online application system as soon as possible, which may include the ability for the private sector to bid on work. (This might require the ability to accept electronic seals, hence legislative action.) This online system would have two primary functions:

- a. Consumer Service Strategy: Make applications available online and allow/encourage the private sector to contact applicants and offer their services, as well as encourage applicants to contact the private sector (per Educational/Disclosure Strategy above). After some period (e.g., 3 to 5 days), if the owner does not update the application to indicate that a private sector practitioner has been retained, the local Health Department would process the application as a bare application (i.e., VDH would be the "provider of last resort").
- b. Free Market Strategy for Backlogs: The site would show when a backlog exists, which would provide business leads to the private sector who may be able to provide services more quickly than the local Health Department. The Code should be amended to eliminate the mandate that the agency pay for the private sector providers in the event of a backlog.

No consensus test, but committee input to be used by VDH

Discussion:

After the discussion on Proposal 11, Dwayne Roadcap explained that the Health Department is looking at what information the agency can put on the website to make the program more transparent. The VDH restaurant program has a popular online site that provides data to the public. All the onsite septic data submitted to VDH is already available through FOIA requests, so an online application system would simply make the data more easily available. The VDH has long considered making applications available online, and the idea is that an online system could also make it easier for service providers and homeowners to find one another. A question remains around exactly what information people would like to see on a VDH website.

To consider this question, the group began a rapid needs assessment for Proposal 16, which addresses the creation of an online system for the onsite septic industry work.

The following ideas, concerns, and questions were expressed during the ten-minute discussion time allotted for Proposal 16:

- Some members were uncomfortable with the state making people's personal information available online so that an installer can make solicitation calls to people

who need work done. There is concern that people with their information listed would be solicited. It was noted that some of this information is in the newspaper, so this happens on a small scale already.

- In the Cumberland Plateau, applications and permits can already be processed by email rather than mail, which simplifies the process.
- Question for VDH – Has there been a mandate that VDH has to digitize its data?
 - Answer: There hasn't been a mandate.
- Frank asked if the VDH could say more about their rationale.
 - Response: VDH collects a lot of data and would like to share it, which also fits with current data management efforts at the department. Submitting permits electronically makes information sharing easier and faster.
- How would the cost of providing this information be managed?
- The concept of making available work visible to OSEs is a good one because it provides flexibility. There should be the ability to provide this data while protecting personal information – we shouldn't discard this idea.
- Online data entry by those applying for and preparing permits would save on VDH resources and time.

After ten minutes of discussion, the committee decided not to test for consensus. The VDH, however, will consider the ideas and views expressed by the committee if it decides to pursue developing the proposed online system.

At the recommendation of a committee member, the committee then began a rapid needs assessment for Online Proposal 8, which addresses the possibility of implementing a statewide policy similar to the “Hanover/Chickahominy Policy.”

Online Proposal 8 – Policy Target Strategy (with Exemptions below): VDH should adopt a policy equivalent to the “Hanover/Chickahominy Policy” and apply it uniformly and statewide. This policy aims for a minimum of 70% private sector and 30% VDH provided onsite septic soil evaluation/design work. The 30% should be reserved primarily for low-income (means-tested) and repair situations. VDH should be the provider of direct delivery of new construction services as a last resort.

Discussion:

The following ideas, concerns, and questions were expressed during the ten-minute discussion time allotted for Proposal 8:

- The Chickahominy policy established that if you want work done by the public sector, you “take a number and wait for your number to be called.” In the meantime, you are advised to seek private sector work. It's not a mandate, but it provides a pathway that leads to greater use of the private sector.
- This is a bad model because it establishes a “private does this much and public does this much” system. It would be better to have 100% private work, with certain exceptions (poverty, repairs, etc.).

- A member clarified that the policy in the Chickahominy District is different from what is being described here. That district instituted the policy to respond to a backlog, and they told people when they might get their case handled and said to try the private sector. However, they couldn't force the applicants to use the private sector.
- A member asked if this policy was effective in remedying the experienced backlog?
 - It helped, but it would be difficult to say how effective it would be in other districts.
- VACo cannot support this proposal because it is statewide and because there are many local differences in the state. The proposal needs to be more flexible to accommodate the differences between the many districts.
- In the Eastern Shore, if a customer brings in a job, regardless of who has worked on it in the past, they bring it to the Health Department. If it's a standard project, the public sector handles it. If it's an alternative project, it's sent to the private sector. The customer, however, still has the choice to use the private sector. There have been no problems with this policy.
- The conflict of interest is still the main concern because the regulator is still involved in the provision of services. We keep talking about provision for low income, but we haven't even defined affordability.
- One member expressed heartburn with reserving the Health Department for low-income work, which is like saying "we want the paying customers and you can have the people that can't pay."

After ten minutes of discussion, Tanya asked if the committee had any direct recommendations or requests for this proposal, advising that if not, the group should move on to another topic. In the absence of any new recommendations or requests, the committee moved into a more general wrap-up discussion about the SHIFT process and its goals.

Meeting Wrap-up Discussion

- A member expressed that if the Health Department won't speak up for its own interests, the committee can't do it. The way things stand, members will need to depend on DPOR and the General Assembly to remedy many of the problems that have arisen.
- Tanya asked if there is something else the group would like to talk about that could contribute to the charge.
- A member noted that it seems like people get more detailed work when they go to the private sector.
- Tanya asked whether the group wanted to turn to Proposal 30, which seems to address these concerns.
- A member asked if it's a realistic goal to transition to 100% private sector evaluation and design at some mile marker. If so, we should work on what that mile marker is before talking about more details.

- HBAV doesn't like the 70%/30% model. When there is a demand for services, people seem to move toward using the private sector. When there's no building pressure, the VDH provides more services.
- Two members spoke about the history of the "Chickahominy policy" and other elements of the current model, which were created in the housing boom, which has now busted. There are now vacancies at local Health Departments, and students aren't entering the soil sciences like they were before. It doesn't seem like it's in the public interest for VDH to spend public money to reduce the amount of work available to the private market.
- A member expressed confusion with the process and a need for the agency to take responsibility for what's happening so that time is not being wasted. It feels like the group is no longer working on what it was convened to work on.
- Frank referred back to an earlier question and asked whether there are problems with the idea that 100% of work, with some undetermined objections, could be done by the private sector.
 - HBAV would disagree with this.
 - VACo does not support mandating 100 percent of the work be done by the private sector. With the huge differences between regions of the state, VACo believes it is critical that no statewide targets or percentage goals be set up but rather that each region is given flexibility to choose whether greater private sector participation works for their region and to maintain the option for direct services provided by the VDH.
- A member asked how many other states have a health department that is as involved as the VDH is.
 - Dwayne said that would be a better question for Dave Lentz. It's hard to find another model similar to that in Virginia. From conversations with other state regulators, it seems that VA is actually quite liberal about what kinds of designs are accepted.
- Another member asked how many states have a fee structure that recovers all costs.

Tanya concluded the discussion by saying that this group seems to agree that increasing private sector involvement is a good goal but hasn't yet found a clear way to achieve this goal.

Public Comment

Three people signed up for an opportunity to speak during the public comment section of the meeting. They shared the following comments with the group:

- Don Alexander expressed an opinion that when the GA created the AOSE program, the goal was to reduce backlog, not necessarily to turn the program over to the private sector.
- Sandra Gentry signed up to talk as a member of the public rather than as a committee member, in order to relay comments she was hearing from her constituency, as distinct from her own views. She explained that when the committee first started the process,

she began to reach out to other installers in the state to better understand what installers think about the goal to increasing private sector involvement. The installers from throughout the state that Sandra spoke with shared that since the institution of the AOSE program, they believe that problems within the onsite septic program have increased, for a number of reasons. These installers are concerned about a lack of professionalism from people who do the design work. Prior to the institution of the AOSE program, there was a perception that the VDH was a responsible agency that was looking out for the public interest of Virginia. Much of this process is about fixing things that exist in the system. As the installer representative, Sandra felt obligated to communicate that the installers she spoke with don't think the current program is working and that it needs to be fixed. Consequently, they can't support moving to 100% private involvement. They don't believe that would be in the best interest of the industry or Virginia, and they want the VDH to stay in the business. Sandra came here as a committee member to find a way to head in the right direction, but her constituency currently doesn't believe this direction should be toward 100% private sector involvement.

- David Hogan expressed during his public comment that the proposal to decrease the VDH fees for non-bare application work caught his interest. That would be a big incentive to utilize the private sector and seems like a good focus point for the committee.

After the public comment time, Frank explained that there remains a lot of potential for future development on this conversation, but maybe not within this process. He suggested that it doesn't seem to make sense to return to talk about proposals that already are strongly opposed, but that IEN is happy to facilitate another meeting if progress is being made. Frank also brought up the possibility of the VDH presenting a proposal to the committee. He said he wanted to respect committee members' time, and asked if the committee thought it would be worthwhile for this group to meet as planned for SHIFT meeting 6 on November 21. A few members indicated that they did not think another meeting would be productive. Others, however, expressed that as long as people wanted to meet and talk, more time together could result in progress.

IEN asked members to continue to hold November 21 for a potential meeting date, pending further conversations with committee members and the VDH. Tanya and Frank then closed the meeting and thanked everyone for their time.

Stakeholder Advisory Committee Participants

Tony Bible – AOSE
 Jim Bowles – VDH Office of Environmental Health Services
 Alan Brewer – Loudoun County Government
 Jimmy Bundick – Bundick Well and Pump CO., VA Well Water Assoc. VP.
 Tyler Craddock – VA Manufactured and Modular Housing Association
 Vincent Day – Sewage Handling and Disposal Advisory Committee
 Charles Devine – Health Director of Lord Fairfax Health District
 Ed Dunn – Virginia Environmental Health Association
 John Ewing – Old Dominion Onsite, Inc.
 Sandra Gentry – Manager of Gentry Septic Tank Service, Secretary of VOWRA
 Dan Holmes – Piedmont Environmental Council
 Scott Honaker – Environmental Health Manager of the Mt. Rogers Health District
 Erik Johnston – Director of Government Affairs, Virginia Association of Counties
 Dave Lentz – Regulatory Director at Infiltrator Systems Inc.
 John Powell – Powell’s Plumbing, VOWRA BOD
 Tim Reynolds – Reynolds-Clark Development
 Bill Sledjeski – CPSS and an AOSE
 Jim Slusser – AOSE, President of the VA Association of AOSes
 Bill Timmins – Sewage Handling and Disposal Advisory Committee
 Mike Toalson – CEO, Home Builders Association of Virginia
 Jeff Walker – President Elect of VAPSS
 Larry Wallace – Virginia State Program Manager of SERCAP
 Neil Williamson – Governmental Affairs Director at Charlottesville Area Assoc. of Realtors

Resource Members

Allen Knapp – VDH
 Dwayne Roadcap – VDH
 Mark Courtney – DPOR
 Trisha Henshaw – DPOR
 Larry Getzler – DPB

IEN Facilitation Team

Tanya Denckla Cobb
 Frank Dukes
 Kelly Wilder
 Jason Knickmeyer

Meeting Observers

| | |
|--|--|
| Don Alexander | Kemper Loyd – VDH-OEHS |
| Tom Ashton – LPSS, VAPPS, RENS, VOWRA, AOSE | Jack McClelland – VDH |
| Gary Coggins – VDH-New River Health District | John Milgrim – Fairfax County Health Department |
| Lance Gregory – VDH-OEHS | Danna Revis – VDH-OEHS |
| Todd Grubbs – VDH | Steve Thomas – Virginia Tech |
| Allen Gutshall – VDH-Central Shenandoah Health District | David Tiller – VDH |
| David Hogan | Idalina Walker |

Meeting #5 Appendix I: SHIFT Charge, Committee Criteria, and Proposals

Discussion

The goal of the SHIFT is to develop consensus recommendations for increasing the use of the private sector statewide in onsite septic program work. Not all participants in the SHIFT process agreed that this goal of increasing private sector participation in the onsite septic program was a desirable goal, but nonetheless they did agree to participate in the process in good faith.

The SHIFT committee identified the following criteria for success.

The SHIFT to more private sector participation in onsite septic program should:

9. Protect Environmental and Public Health
10. Build Public Trust
11. Promote Shared Responsibilities and Ethics
12. Assure Affordable Access to Services For All
13. Be Funded Appropriately and Sustainably
14. Be Clear about Roles and Expectations
15. Be Supported with Enthusiasm by All (VDH and Private Sector)
16. Foster Public Awareness and Education

Significant concerns shared by many committee members are that a transition be encouraged if/when/where there is sufficient availability of private sector services as well as sufficient competition to prevent escalation of price. Committee members proposed a variety of possible measures that could be used to trigger a “SHIFT” to private sector work and (were/were not) able to develop the consensus recommendations listed in this document.

The Committee agreed on the following *overall principles*, but (was/was not) able to reach consensus on how the details of how these principles should be manifested:

1. **Regulatory Oversight:** VDH must provide regulatory oversight, which includes all duties that do not require a license. More specifically, VDH will conduct inspections, manage policy, draft and issue operating permits, maintain and manage records and data.
2. **Emergency Repairs:** VDH must be able to provide soil evaluation/design In the event of an emergency, when emergency repairs are needed.
3. **Affordability:** Safeguards must be in place to ensure onsite septic systems remain affordable to low to moderate-income people. The VDH should remain a provider of last resort.
4. **Availability and Competition:** Private sector involvement in the onsite septic program should be increased where there is sufficient availability and competition.

I. NEW CONSTRUCTION IN SUBDIVISIONS

Discussion

Currently, only two of 35 Health Districts in Virginia perform soils/site evaluation for the purpose of a Subdivision Approval. In 33 Health Districts, the VDH does not provide this service, but refers applicants to the private sector.

In the two Health Districts that do provide this service, Cumberland Plateau and Lenowisco, only three counties (Russell, Tazewell, and Scott) provide soils/site evaluation services, and only in specific situations. For example, in Russell and Tazewell Counties, the VDH will provide soils/site evaluation services only for subdivisions of three or fewer lots, meaning primarily family subdivisions. In 2010, Scott County processed two subdivision applications and the other two counties had none. In 2011, Scott County processed one and the other two counties none. In 2012, no subdivision applications were received. So far in 2013, Scott County has received one subdivision application and the other two counties none. All had been evaluated by AOSes.

Given the current reality – that VDH has already moved out of the business of providing soils/site evaluation for subdivisions – there is a sense among many committee members that a recommendation that this subdivision service should be done by the private sector would not create any change or hardship in most (92 of the 95) Virginia counties, have no negative impact on public health or the environment, and help to build private sector capacity in very rural low-income regions where additional capacity is needed.

VACo and other members on the committee opposed this mandate because they argued that the three counties it would impact have very little to no private sector providers and very limited new construction. They noted that the VDH has discretion to make the program work in all regions of the state and has allowed these counties to continue providing services to subdivisions in order to meet the specific challenges faced by these counties and their homeowners and developers.

Possible SHIFT recommendation, drawn from numerous different member proposals...

5. **Statewide Policy – Mandated OR Encouraged:** VDH should implement as soon as possible a statewide policy that REQUIRES/ENCOURAGES applications for subdivision soil/site evaluation to use the private sector. See “Encouraging Options” below.
 - a. Under both options, VDH should continue the current practice of reviewing private sector work for Subdivision Approval and conveying the approval to local governments. Reviews included paperwork and filed review as determined necessary by VDH.

II. OTHER NEW CONSTRUCTION

Services Covered

- a. Certification letters that a property perks for new construction – but not intending to build immediately.
- b. Conversion of these certification letters to designs and permits.
- c. Conversion to design and permits of subdivision individual lots, where the certification letters were undertaken by the private sector.
- d. Voluntary upgrade designs (i.e., where there is no VDH requirement for the upgrade and the system is working fine).

Discussion

A key goal of SHIFT is to design a successful transition to increased use of the private sector, while avoiding unintended consequences. One model offered by some participants as a desirable path forward is the Hanover/Chickahominy Health District, where use of the private sector is 70%.

Other members suggest that informing applicants of their options and the potential impact of choosing a designer that was not the original evaluator would be good customer service. Many local health departments already do this.

It is standard practice among most private sector OSEs to perform their own independent soil/site evaluations if they are asked to design a system in the same location where others previously completed the initial evaluation. It is not uncommon for this second evaluation to reveal additional information that requires a modification to what was originally planned, allowing a better system to be designed and, presumably, a greater level of protection of public health and the environment to be achieved. Although this may already happen in certain localities, this practice is not necessarily statewide policy within VDH. Some believe that VDH may not perform a second, independent evaluation because they believe they are then less responsible for any soil-related problems that ultimately arise with the system. Others may believe that it opens up a “can or worms” if a second evaluation requires changes to be made to a previously approved site and, therefore, it is not worth the trouble to conduct an independent evaluation. Regardless of the reasons, some members of the SHIFT believe it is appropriate and important to institute a best practice for protecting both public health and the environment, which would require VDH to base its designs on its own independent evaluation, regardless of whether a private soil/site evaluation is already on file.

Possible SHIFT recommendation, drawn from numerous different member proposals...

6. **Mandated Strategy (with Exemptions and Phased Transition):** VDH should implement a statewide policy as soon as possible that the above services be done by the private sector, where there is sufficient competition and with availability for low-income relief.
7. **Policy Target Strategy (with Exemptions):** VDH should adopt a policy equivalent to the “Hanover/Chickahominy Policy” and apply it uniformly and statewide. This policy aims for a minimum of 70% private sector and 30% VDH provided onsite septic soil evaluation/design work. The 30% should be reserved primarily for low-income (means-tested) and repair situations. VDH should be the provider of direct delivery of new construction services as a last resort.

Exemption Options for “Mandated Strategy” and “Policy Target” Approaches:

- a. Health districts with fewer than (X) applications per month could be exempt from this requirement. This will be helpful in low-income counties.
 - b. Phased transition: Further recognizing underserved counties with few application submissions per year, health districts/counties with (X) or fewer applications per month will have two years under the exemption to transition to the newly adopted policy.
 - c. There is deemed sufficient competition if there are two or more private providers who live within 30-miles of the project.
 - d. Applicants that meet a low income “means test” would be offered relief from a fund. The fees would not be lowered, but funds to pay the fees would be given to the OSE or VDH.
8. **Encouraging Options:** VDH should implement a statewide policy as soon as possible that applicants be encouraged to use the private sector for the above construction services. Possible strategies:
- a. **Threshold Strategy:** Site evaluations and designs for all systems with an estimated volume of >1,000 gallons per day will be done by the private sector.
 - b. **Educational/Disclosure Strategy:** VDH should provide educational materials to applicants outlining the limits of VDH services and encourage applicants to obtain private services.
 - c. **Service Provider Strategy:** VDH should provide/make available to consumers the names and contact information of private sector providers willing to provide work in that Health District (through a mechanism such as website or roster maintained by DPOR?).
9. **“Once Touched” Strategy – Mandated OR Encouraged:**
- a. **Mandated Strategy:** If a site has ever had a site evaluation/design by the private sector, VDH should no longer accept a bare application for that site and should require that applicant to submit private sector work.
 - b. **Encouraged Strategy:** For lots previously privately evaluated, applicants should be encouraged to contact the original private entity to discuss advantages and disadvantages of utilizing them to produce the design. Applicants would be informed of their choice to (1) use the original information on file and the original or another private evaluator or (2) use the VDH, while understanding that the system designed by someone other than the original evaluator could be substantially different from what was preliminarily proposed. This places no mandate on applicants but helps them understand their options, educates them on the process, and encourages them to seek advice of original private sector entity.
 - c. **Corollary to the “Once Touched” Encouraged Strategy:** If VDH produces designs for new construction permits, it must conduct and fully document its own independent soil/site evaluation as the basis for its design. VDH personnel would be prohibited from using private sector evaluations as the *sole* basis for producing designs for new construction permits.
 - i. This would not prohibit VDH from using the exact location as the private sector proposed for the system. However, VDH would make it clear to their staff that no responsibility for the functioning of any system designed by VDH in a site previously proposed by a private sector evaluator will rest with the private sector evaluator.
 - ii. This provision is not intended to prohibit VDH from performing proper oversight. VDH staff should be encouraged to file a complaint with DPOR if the findings of their independent evaluation yield significantly different results from the private sector.
10. **Enforcement:** VDH should better enforce the requirement that construction permits only be issued when the applicant intends to build within 18 months.

III. REPAIRS

Discussion

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

Possible SHIFT recommendation, drawn from numerous different member proposals...

11. **Unlimited Septic Work:** VDH may do as much septic repair work as it deems appropriate. There should be no restrictions on this aspect of onsite septic work.
12. **Exemptions Quota:** Repair applications should count toward a locality's quota of (X) permits a month under the "exemption options" above.
13. **Fees for Repairs:** Repair applications should be means-tested and some repairs to some properties should have fees associated with them.

IV. TRANSPARENCY AND COMMUNICATION

Discussion

Most committee members favor greater transparency from VDH, expressing that it would be advantageous to both private sector providers and the public. Many members have also argued that transparency would encourage greater private sector involvement by providing them with a more complete picture of the industry and information about the market for services.

Possible SHIFT recommendation, drawn from numerous different member proposals...

14. **Online System:** To enhance the state's record keeping and tracking capacity, VDH should develop an online application system as soon as possible, which may include the ability for the private sector to bid on work. (This might require the ability to accept electronic seals, hence legislative action.)

This online system would have two primary functions:

- a. **Consumer Service Strategy:** Make applications available online and allow/encourage the private sector to contact applicants and offer their services, as well as encourage applicants to contact the private sector (*per Educational/Disclosure Strategy above*). After some period (*e.g.*, 3 to 5 days), if the owner does not update the application to indicate that a private sector practitioner has been retained, the local Health Department would process the application as a bare application (*i.e.*, VDH would be the "provider of last resort").
- b. **Free Market Strategy for Backlogs:** The site would show when a backlog exists, which would provide business leads to the private sector who may be able to provide services more quickly than the local Health Department. The Code should be amended to eliminate the mandate that the agency pay for the private sector providers in the event of a backlog.

Required Strategy for Backlogs: If the free market/private sector is not allowed transparent, online access to the backlog information, the Health Department would be required to hire from the private sector to reduce a backlog, to be compliant with GMP 51, 54 & 61.

V. ALIGNING WORK PRODUCTS

Discussion

Private sector providers have expressed significant concern that there is a double standard for work product expectations and that VDH staff are not held to the same standards for work product nor provided the same independent field reviews, leading to an unequal playing field and work that reflects poorly on the overall profession. The VDH does not share this view of its staff's work product and has received legal advice that it is within its power to establish different internal operating procedures.

However, the VDH has expressed a desire and willingness to respond to stakeholder concerns and has explored a variety of ways it may align the work product expectations. Most parties agree that, if and when work product expectations are aligned, they should not be watered down. They believe it would not be beneficial to public and environmental safety and health for standards to be weakened.

To increase the quality of onsite designs, some members have expressed the need for 100% Level 2 reviews (onsite inspection prior to installation). While some believe this is probably not financially feasible, they advocate for more than the currently required 10% review. Others also urge that Level 2 reviews should be conducted wherever it is deemed necessary, and, on a sliding scale up to 100% of the time in areas where soils present high risks. Most members generally concur that more Level 2 reviews would eliminate problems down the road and enable better designs.

Possible SHIFT recommendation, drawn from numerous different member proposals...

15. **Work Product Expectations:** VDH should implement a policy as soon as possible that requires VDH and private sector work to meet the same work product expectations, including:
 - a. Cover page
 - b. Certification statement
 - c. Scaled drawings and site plans
 - d. Labeling of license
 - e. Review of work
 - f. Pump curves and specifying name brands, or not doing pump systems
 - g. Substituted system
 - h. Disclosures and disclaimers
 - i. Level 1 and Level 2 reviews (*see below for more*)
 - j. Alternative designs
 - k. Survey plat
16. **Independent Review Expectations:** When the VDH performs onsite septic work, for quality assurance they will be subject to Level 2 reviews equivalent to and at the same percentage of private OSEs. Specifically, a Level 2 review will be conducted by an independent source, such as Virginia Tech extension agent, or equivalent. Therefore, if a local jurisdiction requires OSE/PE work to have 100% level 2 reviews, then VDH staff will have 100% Level 2 reviews.
17. **Review Documentation:** All Level 1 and 2 reviews will be documented with standard VDH forms. Copies of all official documents shall be sent to the OSE/PE after the review has been completed.
18. **Reporting:** The VDH must have clear/transparent reporting. The VDH QA/QC must be revised to address the newly proposed model.
19. **Internal Policy:** The VDH policy (GMP 51) must be revised to reflect the new proposed model.
20. **Oversight:** When VDH OSEs don't meet the new established expectations, VDH should still be expected to enforce civil penalties, as it does for private OSEs.

VI. OTHER RECOMMENDATIONS TO FACILITATE A TRANSITION

Discussion

Designing a pump system is similar to designing an alternative system in that selecting and installing the appropriate components are critical in optimizing system performance in the short term and ensuring robustness of the system over the long term. Pump designs currently produced by VDH do not specify products due to the longstanding policy that prohibits VDH staff from specifying proprietary manufactured components in their designs, instead listing only the minimum operational parameters for the pump and general guidance for the rest of the system. This situation has the potential to threaten public health.

Possible SHIFT recommendation, drawn from numerous different member proposals...

21. **Internal Staff Evaluation:** As the number of soil evaluations/designs undertaken by the VDH decline, VDH will need to change its employee work profiles so that employee performance is driven by realistic objectives and not a value of “X” number of permits issued per month.
22. **Training:** Private associations should (work with VT?) to provide training and funding for increasing private sector providers in areas that are underserved, so that rural communities can see a benefit from more private sector involvement.
23. **Alternative Systems:**
 - a. **No Alternative Systems:** VDH should continue its current practice of not producing alternative system designs.
 - b. **VDH Design Alternative Systems:** To enable the VDH to build the capacity of its staff, properly licensed VDH designers should have more flexibility to design systems appropriate to the site conditions. In certain circumstances, VDH employees who are licensed Alternative Onsite Soil Evaluator should be allowed to design alternative systems.
24. **Pump Systems:** VDH should implement a policy regarding VDH performing conventional pump system designs. There are two options:
 - a. **Eliminate Pump Designs:** Substantially eliminate VDH direct delivery of pump system designs for construction permits. (Provisions could be made for VDH performing this service for the low income or in the case of extenuating circumstances.)
 - i. Provisions should be made for informing an applicant submitting a bare application that VDH will not design pump systems and, if the applicant’s site conditions mandate that a pump is required, he will have to go to the private sector designer to complete the design. The applicant should be encouraged to contact the private sector prior to submitting the application and paying fees if the applicant believes that their situation may require a pump system. (This is not intended to prevent the applicant from applying to VDH, but it is focused on making sure they understand the limitations of using VDH before making an application.)
 - b. **Amend Pump Policy:** VDH should come up with categories of pumps in order to comply with the policy barring the use of proprietary products in designs while ensuring the installation of pumps with proper specifications.

VII. FEES

Discussion

If the VDH is to continue its regulatory oversight role, to protect public and environmental safety and health, it must be able to support the program financially.

Some members of SHIFT believe that the discrepancy between the cost of obtaining soil/evaluation work from the VDH and the private sector is one significant reason why use of the private sector has not risen beyond 30%, overall, in the state. They believe it would be important for the VDH fees to reflect the real cost of the services they provide. By raising their fees, VDH would help “level the playing field” with the private sector.

However, some members believe that the VDH service fees were never intended to reflect the real cost of providing those services. These members point to an earlier General Assembly decision that onsite sewage services were important to the Commonwealth public health and therefore deserved to be subsidized to ensure affordability.

In addition, some members of SHIFT argue that low-income citizens cannot afford any increase in fees, and should not be required to go to the private sector to have septic systems designed beyond what they can afford. These members have said they are unable to support any increase in VDH fees.

Possible SHIFT recommendation, drawn from numerous different member proposals...

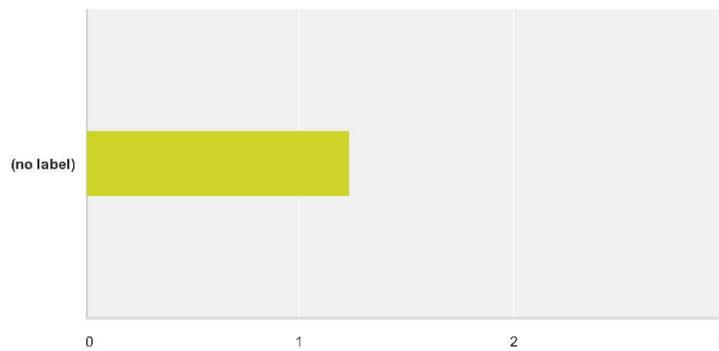
25. **Indemnification Fund:** The Indemnification Fund should be expanded in addition to its current purpose to assist low-income citizens by subsidizing OSE/PE work. To assure checks and balances, it should be managed by an independent agent, such as DPOR or the Department of Planning and Budget.
 - a. To provide steady funding into the Indemnification Fund, a portion of OSE certification/renewal fees should be allocated for the Fund.
 - b. To be able to access the Indemnification Fund, the OSE must offer a 1-year warranty and a 2-year window to make a claim (i.e., have to notify installer there’s a problem within the 1-year window, and make the claim within 2 years).
26. **Other Funds:** The VDH should explore the potential use of other funds to assist low-income citizens, such as the Department of Community Development’s Indoor Plumbing Fund, which may also be available to assist people with new systems.
27. **Revenue Neutral:** To ensure that the shift to increased use of the private sector does not financially impair the VDH ability to continue to provide needed services, the VDH should reduce the application fees for applications with supporting work from an OSE/PE to a minimal amount (consider \$50-\$100?) and offset any revenue loss with new fees for other services (e.g., implement a fee for voluntary upgrade applications, courtesy reviews, some repairs, and “safe, adequate, and proper inspections”).
28. **VDH Fee Raises:** VDH should raise at least some of its fees, which would require legislative action.
 - a. **Raise All Fees:** VDH should raise all septic fees, incrementally and gradually.
 - b. **Cap on Fee Raises:** If the VDH does raise its fee, there should be a clear cap established for any fee increases of no greater than 20%, ideally less.

Meeting 5 Appendix II: SHIFT Gradients of Agreement Survey

SHIFT Gradients of Agreement

Q2 Regulatory Oversight: VDH must provide regulatory oversight, which includes all duties that do not require a license. More specifically, VDH will conduct inspections, manage policy, draft and issue operating permits, maintain and manage records and data.

Answered: 22 Skipped: 2



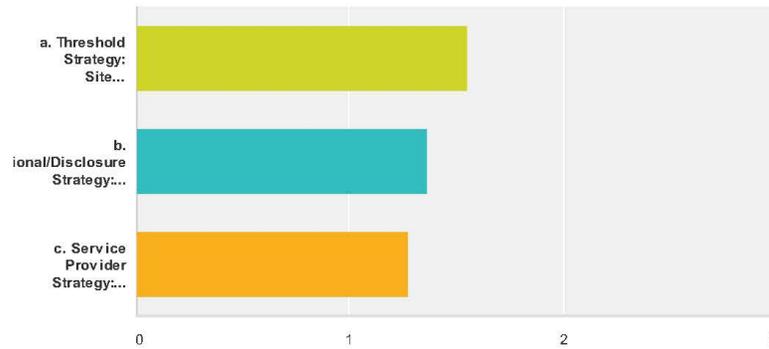
| | 3: Fully support; able to live with it; will not work actively against it outside of the process | 2: May have some questions/concerns but still able to live with this decision; will not work actively against it outside of the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|--|---|---|-------|----------------|
| (no label) | 77.27% 17 | 22.73% 5 | 0% 0 | 22 | 1.23 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|---|---------------------|
| 1 | Agree with this statement, but also VDH has a role in direct services. Can agree as long as this is not worded in report to sound like we oppose VDH providing direct services. | 10/30/2013 11:58 AM |
| 2 | Would prefer that the parenthetical statement, which includes all duties not requiring a license, be removed. | 10/30/2013 9:54 AM |
| 3 | Has the group been able to differentiate the difference between licensee roles and regulator roles. Currently VDH does not differentiate its Permit/Design, but one requires a license and one does not. Drafting of permits as specified in 54.1_410B COV must be further defined. | 10/29/2013 11:41 PM |
| 4 | Standardization needs to be a key component if VDH is to still draft permits. | 10/29/2013 9:35 PM |
| 5 | My concern is with the "do not require a license" part. Is there "regulatory oversight" that requires a license? I can live with it, the way it is, but I am concerned it may have some unintended consequences- the way it is written. | 10/29/2013 6:05 PM |

SHIFT Gradients of Agreement

Q10 Encouraging Options: VDH should implement a statewide policy as soon as possible that applicants be encouraged to use the private sector for the above construction services. Possible strategies:

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|---|---|--|---|-------|----------------|
| a. Threshold Strategy: Site evaluations and designs for all systems with an estimated volume of >1,000 gallons per day will be done by the private sector. | 59.09% 13 | 27.27% 6 | 13.64% 3 | 22 | 1.55 |
| b. Educational/Disclosure Strategy: VDH should provide educational materials to applicants outlining the limits of VDH services and encourage applicants to obtain private services. | 63.64% 14 | 36.36% 8 | 0% 0 | 22 | 1.36 |
| c. Service Provider Strategy: VDH should provide/make available to consumers the names and contact information of private sector providers willing to provide work in that Health District (through an easy mechanism such as website or roster maintained by DPOR?). | 72.73% 16 | 27.27% 6 | 0% 0 | 22 | 1.27 |

| # | Comments for "a. Threshold Strategy: Site evaluations and designs for all systems with an estimated volume of >1,000 gallons per day will be done by the private sector." | Date |
|---|---|---------------------|
| 1 | Where competition exists | 10/30/2013 1:41 PM |
| 2 | Still doesn't address potential pricing concerns | 10/30/2013 11:25 AM |
| 3 | Probably okay with this. Would like to hear more discussion. | 10/30/2013 10:38 AM |
| 4 | This should include less and greater than 1000GPD. The goal is to reduce VDH CONFLICTS OF INTEREST and reduce government competition with small business | 10/29/2013 11:42 PM |
| 5 | Why do we need this? Doesn't this already exist? | 10/29/2013 9:44 AM |

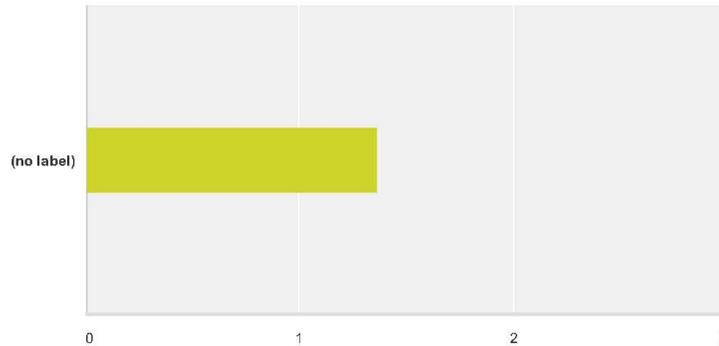
SHIFT Gradients of Agreement

| | | |
|----------|---|---------------------|
| 6 | "Encouraged" is the key word here.... | 10/28/2013 7:14 PM |
| 7 | >1000 GPD only ? | 10/28/2013 5:01 PM |
| # | Comments for "b. Educational/Disclosure Strategy: VDH should provide educational materials to applicants outlining the limits of VDH services and encourage applicants to obtain private services." | Date |
| 1 | Consumer choice is good | 10/30/2013 1:41 PM |
| 2 | Encourage applicants to consider the benefits of private services is better wording | 10/30/2013 11:58 AM |
| 3 | This SHIFT process needs to include the allowance of VDH OSEs to design gravelless systems using the prescriptive regulations and also design pump systems per the private sector requirements and lastly, secondary treatment systems - especially for repairs and emergency situations. These issues will dictate what 'limits' VDH services may entail. | 10/30/2013 10:38 AM |
| 4 | OK, provided capacity exists. This works in some part of Virginia, but not all. The plan needs to address local conditions. | 10/30/2013 6:19 AM |
| 5 | There are VDH disclosures (agency problems) and then there are individual licensee disclosures. I am not quite sure how they are going to accomplish both under one disclosure statement. It would seem prudent to have an agency disclosure and a mandatory licensee disclosure. This was supported by Mark Courtney during the Oct 29, 2013 SHADAC meeting. Licensed individuals are solely responsible for their own actions, and can not rely on an "employer" to seek relief/remedy | 10/29/2013 11:42 PM |
| # | Comments for "c. Service Provider Strategy: VDH should provide/make available to consumers the names and contact information of private sector providers willing to provide work in that Health District (through an easy mechanism such as website or roster maintained by DPOR?)." | Date |
| 1 | Support as long as VDH feels comfortable doing this in a way that deals with any liability issues. | 10/30/2013 11:58 AM |
| 2 | list should not have to be maintained by local health districts - it should be administered through DPOR | 10/30/2013 11:19 AM |
| 3 | Agree but consumer must still be able to use VDH if they choose to do so. | 10/30/2013 10:38 AM |
| 4 | VDH could charge an "administrative fee" per district for registering | 10/29/2013 11:42 PM |
| 5 | VDH could provide a website or toll free number. Never give a list of names. Favoritism may be implied and updating of list will always lag when new providers are in the area. | 10/29/2013 1:27 PM |
| 6 | I like this idea but see it as a possible nightmare for VDH to keep it up to date. | 10/28/2013 7:14 PM |
| 7 | I think the private providers need to develop their own web resource which they keep up to date and maintain and review to ensure no false or out dated information is posted. The site should list the contact information, the license, the years of experience, the malpractice/judgement experience of the provider, the BBB complaint information, and the jurisdictions where the provider is willing to work. With the foregoing guaranteed, I don't mind providing VDH customers with a referral to the web site. | 10/28/2013 5:06 PM |

SHIFT Gradients of Agreement

Q21 Reporting: The VDH must have clear/transparent reporting. The VDH QA/QC must be revised to address the newly proposed model.

Answered: 22 Skipped: 2



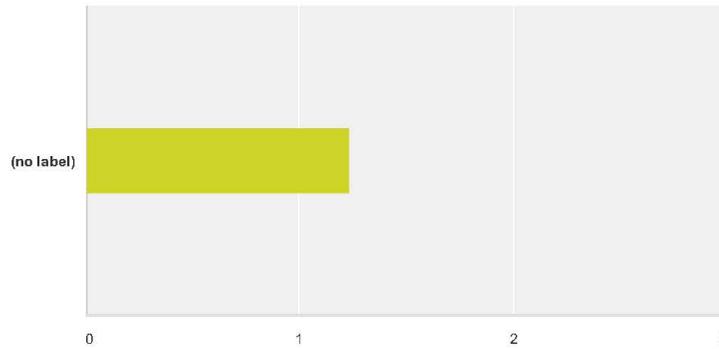
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 63.64% 14 | 36.36% 8 | 0% 0 | 22 | 1.36 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | These internal QA/QC reports could involve personnel issues. Summary information or a summary of findings would be better. Not sure how this promotes privatization. | 10/30/2013 11:33 AM |
| 2 | Not sure SHIFT has finalized the 'newly proposed model' so I'm not against it - at least yet. | 10/30/2013 11:06 AM |
| 3 | Don't much care - but, if there is a QA/QC report, where's the accountability? What happens if VDH does not meet a goal or requirement? | 10/29/2013 9:45 AM |
| 4 | Current QA/QC process is recognized within VDH as inadequate and incomplete. VDH is working to improve this process. | 10/28/2013 5:23 PM |

SHIFT Gradients of Agreement

Q20 Review Documentation: All Level 1 and 2 reviews will be documented with standard VDH forms. Copies of all official documents shall be sent to the OSE/PE after the review has been completed.

Answered: 22 Skipped: 2



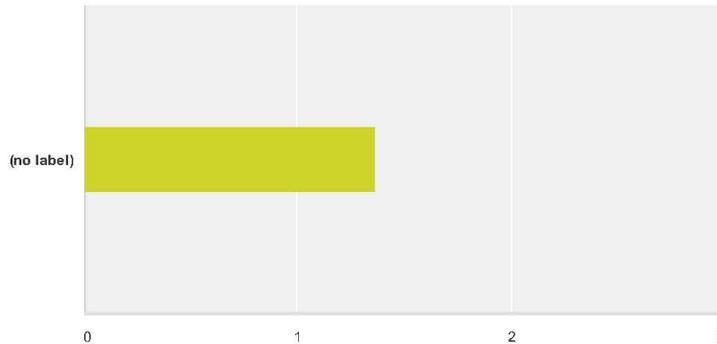
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 81.82% 18 | 13.64% 3 | 4.55% 1 | 22 | 1.23 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | Level 1 reviews for VDH personnel should be performed by an independent reviewer. | 10/30/2013 11:31 AM |
| 2 | This would comply with existing policy see QA/QC. | 10/30/2013 9:46 AM |
| 3 | not sure follow this- are you referring to an independent level 1 or 2 ? | 10/29/2013 10:27 PM |
| 4 | I thought this was already done. | 10/29/2013 9:45 AM |

SHIFT Gradients of Agreement

Q3 Emergency Repairs: VDH must be able to provide soil evaluation/design in the event of an emergency, when emergency repairs are needed.

Answered: 22 Skipped: 2



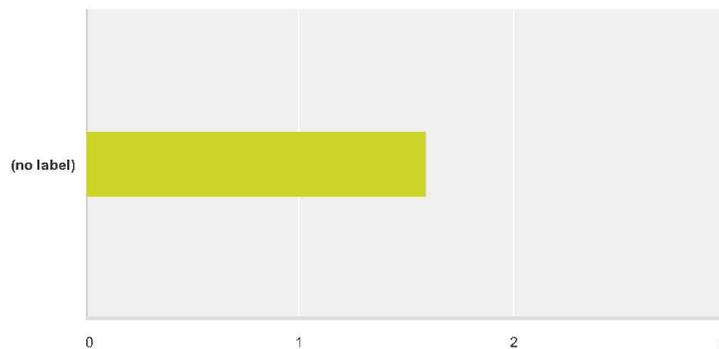
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 72.73% 16 | 18.18% 4 | 9.09% 2 | 22 | 1.36 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | What constitutes an emergency? I have no issue as long as the private sector cannot react as quickly or does not wish to provide the service. | 10/30/2013 11:28 AM |
| 2 | Will endorse provided: 1. written policy and record keeping; 2. Means tested 3. All design by Licensed OSE | 10/30/2013 7:09 AM |
| 3 | Defining an "emergency" is absolute. This as a VDH Loophole to exploit more of the same conduct. "EL HAMM, 2006 By completing the transition of the direct services of site and soil evaluation, system design and installation inspection to the private sector, VDH could allow the forces of the free market to flourish". VDH staff still must address the internal conflicts of interest. | 10/29/2013 11:41 PM |
| 4 | There must be a solid definition of an emergency repair and specific conditions set upon when VDH will be able to do this type of work | 10/29/2013 11:33 PM |
| 5 | Alternative systems and complex designs need to be done by the private sector. It doesn't make sense to put the most difficult septic design work in the lap of someone that doesn't have much experience designing systems. | 10/29/2013 9:35 PM |
| 6 | I don't know what an Emergency Repair is. It's not in the Regulations. What exactly is an Emergency Repair? Are all repairs Emergencies? | 10/29/2013 9:44 AM |
| 7 | Is this the ONLY case where VDH will provide soil evaluation/design? If only in the case of emergencies, I will have reservations about it. A statement of the department's intent to continue to provide services for repairs when owners qualify as "low income" or some other designation would get my full support. Emergency needs to be defined. | 10/28/2013 6:51 PM |

SHIFT Gradients of Agreement

Q18 Work Product Expectations: VDH should implement a policy as soon as possible that requires VDH and private sector work to meet the same work product expectations, including: a. Cover page b. Certification statement c. Scaled drawings and site plans d. Labeling of license e. Review of work f. Pump curves and specifying name brands, or not doing pump systems g. Substituted system h. Disclosures and disclaimers i. Level 1 and Level 2 reviews (see below for more) j. Alternative designs k. Survey plat

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 50% 11 | 40.91% 9 | 9.09% 2 | 22 | 1.59 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|---|---------------------|
| 1 | I do believe there is a higher level of expectation, or their should be among public employees than the private sector. Their motives are different. I do believe VDH employees providing such services should be evaluated on their performance. | 10/30/2013 1:55 PM |
| 2 | This would be extremely burdensome and expensive for repairs. Survey plats, scaled drawings and site plans just to repair a minor component of a system doesn't make sense. | 10/30/2013 11:33 AM |
| 3 | Include the site evaluation process: soil and site documentation, percolation, Ksat test and monitoring well data. Suggest 100 percent level 2 for all alternative systems and optional for conventional systems when fully documented with percolation and water table data as required. The VDH review process timeline should not distinguish between private and public sector applications | 10/30/2013 11:31 AM |
| 4 | Fees associated with the service should reflect the true cost of that service. | 10/30/2013 11:26 AM |
| 5 | Would like to hear more details but am not against a uniform work product. | 10/30/2013 11:06 AM |

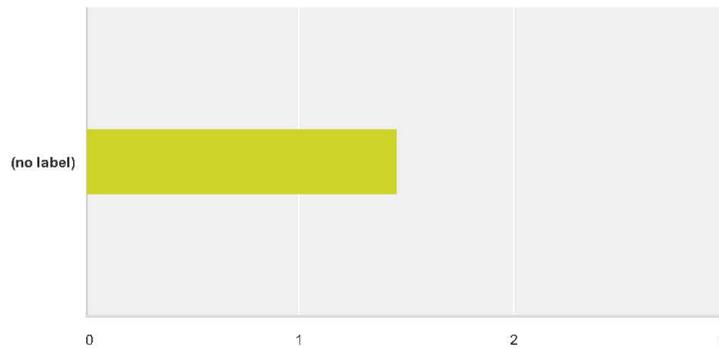
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| | | |
|----|---|---------------------|
| 6 | support main argument, but don't think listing of a-kis necessary. We are getting to far in the weeds, but can basically urge the workproducts to be aligned as far as is possible and give a menu of items to look into. | 10/30/2013 10:56 AM |
| 7 | Work product must be same, not similar. I do not understand the "substituted system". VDH just stated today at the SHADAC that public sector employed OSE's will not be able to refuse a substituted system and a contractor can still modify their work "product/design" without prior approval. Does this mean they will do that to me as well??? | 10/30/2013 7:37 AM |
| 8 | VDH should not do alternative designs as this presents a conflict of interest. | 10/29/2013 11:55 PM |
| 9 | scaled drawing requirement is debatable. | 10/29/2013 1:35 PM |
| 10 | There must be a MOU or similar agreement between DPOR and VDH. DPOR must be willing to process complaints against all licensees - not just the private sector! | 10/29/2013 9:45 AM |
| 11 | Concerns about specific items that the private providers want on VDH designs. Some of the items are not required for VDH by code or regulation. | 10/28/2013 5:23 PM |
| 12 | The devil is in the details. | 10/28/2013 4:57 PM |

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Q29 Other Funds: The VDH should explore the potential use of other funds to assist low-income citizens, such as the Department of Community Development's Indoor Plumbing Fund, which may also be available to assist people with new systems.

Answered: 22 Skipped: 2



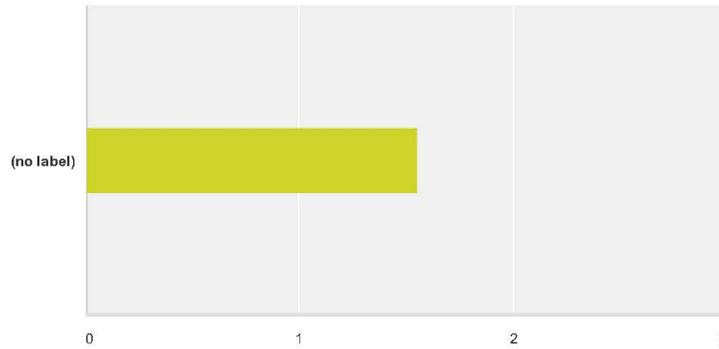
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 63.64% 14 | 27.27% 6 | 9.09% 2 | 22 | 1.45 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|---|---------------------|
| 1 | issues with use for new systems. | 10/30/2013 11:39 AM |
| 2 | The indoor plumbing program has been using these funds for decades. | 10/30/2013 11:34 AM |
| 3 | I support the shift proposal asking for more general fund dollars to assist low-income citizens with septic issues. Looking at DHCD programs is fine as well, but the ask is for funding not just explore other sources. | 10/30/2013 11:09 AM |
| 4 | Funding of construction is not a public health issue, this would be under different agencies, perhaps Housing and Community Development. | 10/30/2013 9:43 AM |
| 5 | As the Region 5 IPR Provider for DHCD, we realize that DHCD has had to drastically reduce the amount of funds available to each regional provider; however, the providers are allowed to spend program income back in the same region, so in a few years, we may have more funds available to assist with this. | 10/29/2013 10:15 AM |
| 6 | Sure - why not. | 10/29/2013 9:45 AM |
| 7 | I do not understand the fund mentioned well enough to know if this is a realistic option. | 10/28/2013 5:34 PM |

SHIFT Gradients of Agreement

Q22 Internal Policy: The VDH policy (GMP 51) must be revised to reflect the new proposed model.

Answered: 22 Skipped: 2



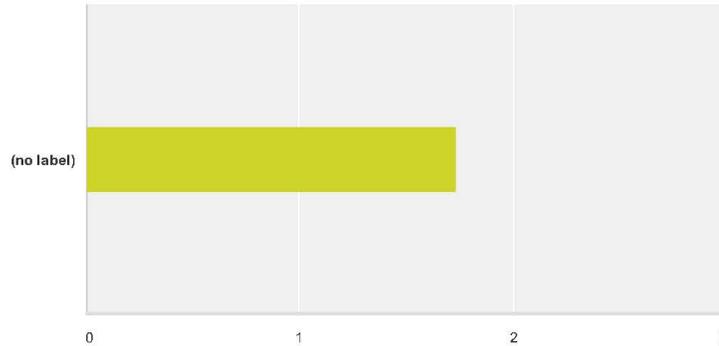
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 59.09% 13 | 27.27% 6 | 13.64% 3 | 22 | 1.55 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | Not sure what GMP 51 is. | 10/30/2013 1:55 PM |
| 2 | See *21 comment! | 10/30/2013 11:06 AM |
| 3 | need more information | 10/30/2013 10:56 AM |
| 4 | Don't know enough about GMP 51, but any policy that is 20 years old needs to be revised. | 10/29/2013 9:45 AM |

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Q5 Availability and Competition: Private sector involvement in the onsite septic program should be increased where there is sufficient availability and competition.

Answered: 22 Skipped: 2



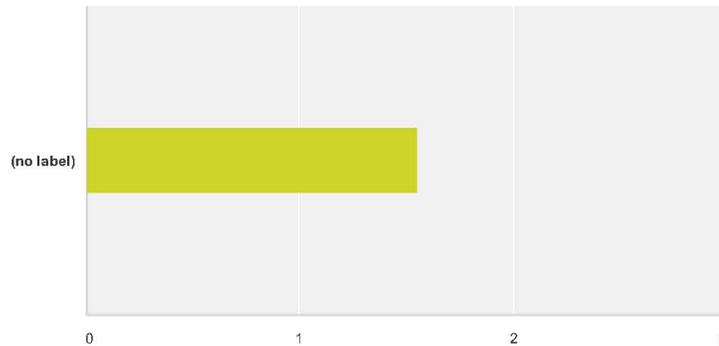
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 45.45% 10 | 36.36% 8 | 18.18% 4 | 22 | 1.73 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|--|---------------------|
| 1 | My 2 to this question does represent an across the board move for privatization of current VDH services. My 2 only represents a willing to consider move toward consideration of privatization of a limited number of current VDH services. Otherwise, I would have a 1 answer here. | 10/30/2013 1:14 PM |
| 2 | fine as long as we say should be increased through incentives. Cannot support if this is meant to mandate this increase. | 10/30/2013 11:58 AM |
| 3 | Private sector site evaluation and design involvement should be mandated. Public sector can continue to offer these services where there is presently insufficient availability of private sector regulators. However VDH shall advertise to the public the total transition to private sector following a predetermined time (???) | 10/30/2013 11:28 AM |
| 4 | I still do not know exactly what this means. At 30,000 feet, we support the concept but there have been specific ideas discussed (annual conventional septic inspections, time of transfer inspections, etc.) that seemingly simply increase the regulatory burdens on homeowners (and the work for private sector) without a significant public health benefit that we can not support. | 10/30/2013 9:54 AM |
| 5 | VDH needs to remain as a choice that the property owner may select instead of mandating owners go to private sector OSE. | 10/30/2013 9:43 AM |
| 6 | removing VDH from the conflict of interest will increase private sector participation statewide. | 10/29/2013 11:41 PM |
| 7 | This suggests that where supply is you will create demand and that where there is no supply you will create no demand. This is asinine! The program is a state-wide program. Supporting this will allow VDH to maintain their 98-100% market share in southern and southwest Virginia. | 10/29/2013 11:33 PM |
| 8 | Sort of a similar response as the last question. Can we look across the state where there are counties where there aren't many plumbers, electricians, masons, framers, roofers, HVAC techs, fine graders, or any other trades associated with building homes and discuss how we can promote or not promote private sector professionals. | 10/29/2013 9:35 PM |
| 9 | It seems like a mute point-kind of meaningless because the market will dictate the increase.... | 10/29/2013 6:05 PM |
| 10 | Chicken or the egg question. Who makes the determination of what is enough private sector involvement. | 10/29/2013 9:44 AM |
| 11 | I do not support any diminution of the Department's ability to provide design services so as to benefit a sector of the private business community. | 10/29/2013 9:27 AM |
| 12 | what would sufficient availability and competition be based from? | 10/28/2013 4:36 PM |

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Q25 Training: Private associations should work with professionals (such as Virginia Tech) to provide training and funding for increasing private sector providers in areas that are underserved, so that rural communities can see a benefit from more private sector involvement.

Answered: 22 Skipped: 2



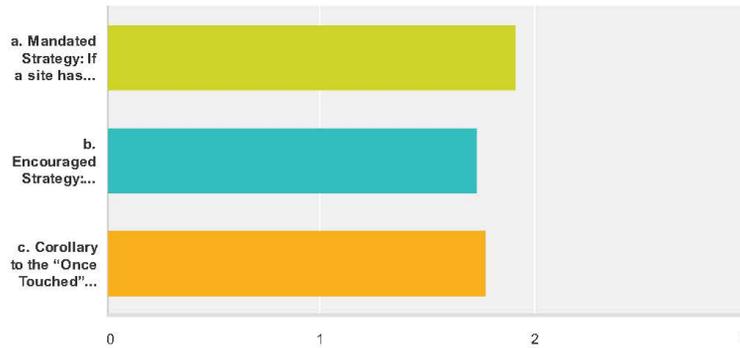
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 63.64% 14 | 18.18% 4 | 18.18% 4 | 22 | 1.55 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | The marketplace should determine this. | 10/30/2013 2:00 PM |
| 2 | Not sure what benefit the rural communities would see but will always encourage more training to both public and private OSEs. | 10/30/2013 11:21 AM |
| 3 | This is a positive policy ask for the committee but I do not think the group has any standing to make such a recommendation. If members of the associations see fit to dedicate their limited resources to this task so be it. | 10/30/2013 10:59 AM |
| 4 | Training via Blackstone, VAPSS, VOWRA etc. is self funding by registration fees. Funding to support VT training or research has traditionally been from organizations or agencies. | 10/30/2013 9:43 AM |
| 5 | how would this be funded? Let the market work it out | 10/29/2013 10:31 PM |
| 6 | Once more, we should let the marketplace determine if a private individual wishes to go into business as an OSE because he sees a need out there, and not assist with "job creation" for a for-profit entity by utilizing public funds through VT or other entities. | 10/29/2013 10:10 AM |
| 7 | Is VDH contributing to the cost of the training or funding? What's going on in Blackstone? | 10/29/2013 9:45 AM |

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Q11 “Once Touched” Strategy – Mandated OR Encouraged:

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|--|---|--|---|-------|----------------|
| a. Mandated Strategy: If a site has ever had a site evaluation/design by the private sector, VDH should no longer accept a bare application for that site and should require that applicant to submit private sector work. | 36.36% 8 | 36.36% 8 | 27.27% 6 | 22 | 1.91 |
| b. Encouraged Strategy: For lots previously privately evaluated, applicants should be encouraged to contact the original private entity to discuss advantages and disadvantages of utilizing them to produce the design. Applicants would be informed of their choice to (1) use the original information on file and the original or another private evaluator or (2) use the VDH, while understanding that the system designed by someone other than the original evaluator could be substantially different from what was preliminarily proposed. This places no mandate on applicants but helps them understand their options, educates them on the process, and encourages them to seek advice of original private sector entity. | 45.45% 10 | 36.36% 8 | 18.18% 4 | 22 | 1.73 |

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| | | | | | |
|---|-----------|-------------|-------------|----|------|
| c. Corollary to the "Once Touched" Encouraged Strategy: If VDH produces designs for new construction permits, it must conduct and fully document its own independent soil/site evaluation as the basis for its design. VDH personnel would be prohibited from using private sector evaluations as the sole basis for producing designs for new construction permits. (i) This would not prohibit VDH from using the exact location as the private sector proposed for the system. However, VDH would make it clear to their staff that no responsibility for the functioning of any system designed by VDH in a site previously proposed by a private sector evaluator will rest with the private sector evaluator. (ii) This provision is not intended to prohibit VDH from performing proper oversight. VDH staff should be encouraged to file a complaint with DPOR if the findings of their independent evaluation yield significantly different results from the private sector. | 50% 11 | 22.73% 5 | 27.27% 6 | 22 | 1.77 |
|---|-----------|-------------|-------------|----|------|

| # | Comments for "a. Mandated Strategy: If a site has ever had a site evaluation/design by the private sector, VDH should no longer accept a bare application for that site and should require that applicant to submit private sector work." | Date |
|----|---|---------------------|
| 1 | Where there is a reasonable choice among the private sector | 10/30/2013 1:41 PM |
| 2 | Any regulant, private or public, shall have the option of conducting their own work regardless of any existing approvals or denials. The "site" is a specific location. Another regulant may evaluate a totally different area or may evaluate the approved area differently. As long as VDH continues to accept bare applications and perform site evaluations and designs under the present codes and regulations there should be no distinction. | 10/30/2013 11:29 AM |
| 3 | Still think a full-cost public option needed. | 10/30/2013 11:25 AM |
| 4 | Opposed to this mandate | 10/30/2013 10:45 AM |
| 5 | Disagree. Same concept as above - the owner should maintain the ability to choose whom he desires to process his application for an onsite sewage disposal system construction permit. an OSE may do the certification letter but that should not, in any way, obligate future owners to use that OSE instead of allowing the applicant the freedom to choose public or private OSE to design the construction permit. | 10/30/2013 10:38 AM |
| 6 | This doesn't work for underserved areas or low-income applicants. | 10/30/2013 6:19 AM |
| 7 | Typo? If a site has never? | 10/29/2013 10:01 PM |
| 8 | could be special circumstances. | 10/29/2013 1:27 PM |
| 9 | This is the BARE APPLICATION definition that already exists? | 10/29/2013 9:44 AM |
| 10 | There could be circumstances where property changes hands and previous design work no longer applies. If VDH is going to do any design work, there should be some provision for this circumstance. | 10/28/2013 7:14 PM |
| 11 | Not for repairs. | 10/28/2013 4:42 PM |
| # | Comments for "b. Encouraged Strategy: For lots previously privately evaluated, applicants should be encouraged to contact the original private entity to discuss advantages and disadvantages of utilizing them to produce the design. Applicants would be informed of their choice to (1) use the original information on file and the original or another private evaluator or (2) use the VDH, while understanding that the system designed by someone other than the original evaluator could be substantially different from what was preliminarily proposed. This places no mandate on applicants but helps them understand their options, educates them on the process, and encourages them to seek advice of original private sector entity." | Date |
| 1 | Same as above | 10/30/2013 1:41 PM |
| 2 | cannot support mandated strategy | 10/30/2013 11:58 AM |
| 3 | Confusing. If an approval is on file for a specific location the applicant should be advised of the process of either obtaining a construction permit and/or detailing the abbreviated design and limitations. The applicant can then decide if that location and system satisfies their requirements. If not hire a private sector or submit bare application under the present regulations and start over. If the applicant uses the info on file then a private designer, either the OSE or any other qualified designer should be contacted. I would advise against VDH providing that design. | 10/30/2013 11:29 AM |
| 4 | Sounds reasonable. May have further discussion. This approach needs to be considered for some of the above items I have already commented on. VDH should never be removed from designing onsite sewage disposal system construction permits. | 10/30/2013 10:38 AM |

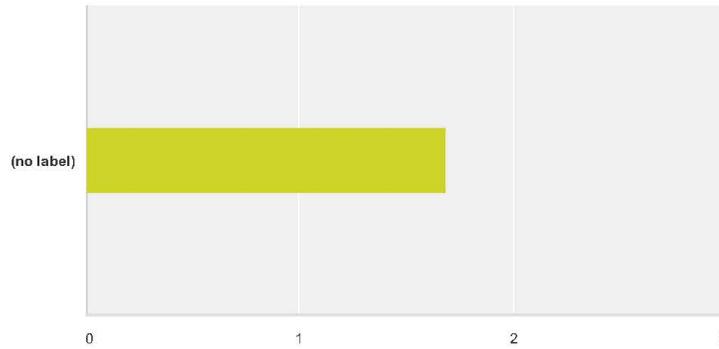
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| | | |
|----|---|---------------------|
| 5 | Establish the public interest in expending resources on an established lot. The exception would be where a controversy exists between two or more site interpretations. In the event of a substantial discrepancy a code official may be required to adjudicate. | 10/30/2013 7:40 AM |
| 6 | strike "use the VDH". This decreases private sector participation. Should localities support the use of VDH, then localities must pick up difference of design/soil evaluation fees up to the actual cost of delivery of service | 10/29/2013 11:42 PM |
| 7 | Would it not be best to eliminate "preliminarily"- and change to "initially"- ? | 10/29/2013 10:06 PM |
| 8 | Too complex. | 10/29/2013 9:44 AM |
| 9 | option one should be followed. | 10/28/2013 5:01 PM |
| # | Comments for "c. Corollary to the "Once Touched" Encouraged Strategy: If VDH produces designs for new construction permits, it must conduct and fully document its own independent soil/site evaluation as the basis for its design. VDH personnel would be prohibited from using private sector evaluations as the sole basis for producing designs for new construction permits. (i) This would not prohibit VDH from using the exact location as the private sector proposed for the system. However, VDH would make it clear to their staff that no responsibility for the functioning of any system designed by VDH in a site previously proposed by a private sector evaluator will rest with the private sector evaluator. (ii) This provision is not intended to prohibit VDH from performing proper oversight. VDH staff should be encouraged to file a complaint with DPOR if the findings of their independent evaluation yield significantly different results from the private sector." | Date |
| 1 | need more information, not sure I can support this | 10/30/2013 11:58 AM |
| 2 | Private sector evaluations resulting in a cert letter following Level I and II reviews or direct involvement of VDH should stand alone and be used for designs by VDH and any other designer. VDH and any other regulant should not provide designs in areas which have site documentation by others but has not been VDH approved. However this is not to preclude VDH or any other designer from conducting their own evaluation of the approved site to be certain that it conforms to the approval documents. However if VDH staff files a complaint against a regulant based on that independent evaluation then VDH is also complicit since they were involved in the approval process. (ii) Private sector OSE's should be encouraged to notify VDH about the findings of their independent evaluation of a site proposed by public sector if it yields significantly different results. | 10/30/2013 11:29 AM |
| 3 | this would not be efficient; there will be situations where this will cause additional time and cost to the applicant. | 10/30/2013 11:19 AM |
| 4 | Couldn't agree more. Corollary - there have been situations where private OSEs/PEs used VDH soils :-) | 10/30/2013 10:38 AM |
| 5 | Being licensed already requires this? IF you choose to utilize someone else's work you are held completely liable for the entire project..... | 10/29/2013 11:42 PM |
| 6 | VDH should use the original site but confirm the soil. | 10/29/2013 10:01 PM |
| 7 | who dreamed this s-t up? | 10/29/2013 1:27 PM |
| 8 | Too complex and unenforceable. | 10/29/2013 9:44 AM |
| 9 | The courts make the call regarding liability for prior work. VDH can not absolve prior private sector providers of liability for their evaluations. | 10/28/2013 5:06 PM |
| 10 | I'm not really sure that everyone would interpret this the same way. I agree that if VDH designs a system, VDH has a responsibility to be sure that the site evaluation is correct, regardless of who conducted that site evaluation. On the other hand, a VDH design should not excuse the original evaluator from responsibility for poor work. I think this gets at liability, which is not an issue that we can decide. | 10/28/2013 4:42 PM |

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Q13 Unlimited Septic Work: VDH may do as much septic repair work as it deems appropriate. There should be no restrictions on this aspect of onsite septic work.

Answered: 22 Skipped: 2



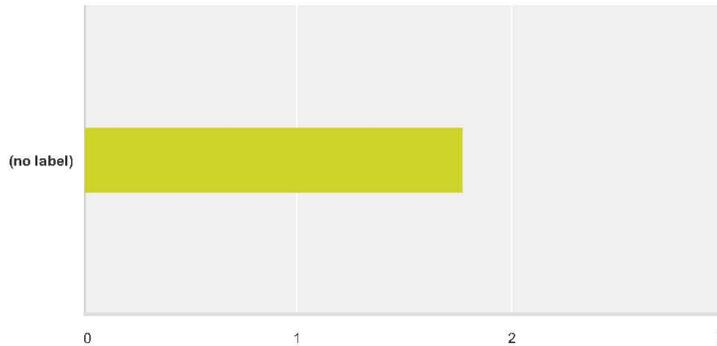
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 54.55% 12 | 22.73% 5 | 22.73% 5 | 22 | 1.68 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | To my knowledge VDH does not perform repairs on septic systems. VDH does evaluate malfunctioning systems and recommends repair strategies. The private sector could perform a role if individuals were given the option of obtaining their services. | 10/30/2013 11:29 AM |
| 2 | Full cost should be associated with the repair unless it is for an existing unit serving a low to moderate income household. | 10/30/2013 11:25 AM |
| 3 | VDH termed the phrase "not considered profitable work". The market must be allowed to develop and repairs are a part of the market. unlimited work is perpetuating VDH to compete with small business. We are trying to curb this activity. | 10/30/2013 7:37 AM |
| 4 | Who will pay VDH? The same fund that was suggested earlier?- there is no reason why this cannot be profitable. Time is time- one can charge for their time- I don't buy the contention it is not profitable. Repairs can offer great insight and learning experiences- if VDH has to do it than the efforts should be totally supported and well documented. I think the private sector has much to offer in these situations. | 10/29/2013 10:12 PM |
| 5 | I think I do remember some speaking up about VDH doing repairs. Repairs are hard. The designers that do the most work will have the most knowledge. I don't think VDH is going to do alternative systems. | 10/29/2013 10:06 PM |
| 6 | There must be an "equal playing field" for repairs. VDH should limit their repair work to WAIVERS only. | 10/29/2013 9:45 AM |
| 7 | define septic repair work not to include. Pumping of, required annual AOSS inspections, component replacement, new installations, ETC, | 10/28/2013 5:07 PM |

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Q15 Fees for Repairs: Repair applications should be means-tested and some repairs to some properties should have fees associated with them.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 45.45% 10 | 31.82% 7 | 22.73% 5 | 22 | 1.77 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|---|---------------------|
| 1 | I think all repairs should have fees associated with them. | 10/30/2013 1:43 PM |
| 2 | May be able to support if this is a local option. | 10/30/2013 11:58 AM |
| 3 | There should be no fees for any repair evaluation application for systems < 1000 gpd. | 10/30/2013 11:29 AM |
| 4 | There should be more specificity concerning who would be charged for repair permits. | 10/30/2013 11:22 AM |
| 5 | Absent a concrete proposal we can not support this at this time | 10/30/2013 10:47 AM |
| 6 | No - all failing systems are public health risks and should not have fee discrimination based upon financial values which may also discourage forthcoming of malfunctioning systems needing repair. | 10/30/2013 10:43 AM |
| 7 | Loudoun County has an average home resale price of over \$400,000.00. Why can the residents not afford an application fee to be used for betterment loans/low income owners. | 10/30/2013 7:37 AM |
| 8 | Charging fees for repair work discourages homeowners from seeking assistance and allows for the perpetuation of failing systems that may have raw sewage at the ground surface. Administer repairs with as few financial and administrative encumbrances as possible. | 10/30/2013 6:21 AM |
| 9 | should say "permit" fee | 10/29/2013 1:30 PM |
| 10 | Possibly - the devil is in the details. | 10/29/2013 9:45 AM |
| 11 | This seems fair on the surface but could cause delays in repair of failing systems. If this can be done in a timely manner so the repair can be accomplished quickly, I can support it. Otherwise, there should be no fees for repair applications. | 10/28/2013 7:19 PM |
| 12 | Any fee for a repair permit increases the barrier to obtaining a timely repair and increases the risk to public health. Let any money go toward the repair itself. | 10/28/2013 5:09 PM |
| 13 | How much additional work would be required of VDH staff to obtain and confirm the applicant's finances? | 10/28/2013 4:46 PM |

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Q7 Mandated Strategy (with Exemptions and Phased Transition): VDH should implement a statewide policy as soon as possible that the above services be done by the private sector, where there is sufficient competition and with availability for low-income relief.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 31.82% 7 | 40.91% 9 | 27.27% 6 | 22 | 1.95 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | Home owners want to chose Private or Public, are asking for choice | 10/30/2013 4:47 PM |
| 2 | By answering with a 1, I repeat that cost is important to all households and that privatization should not be mandated for this service unless there is a reasonable level of competition among the private sector | 10/30/2013 1:41 PM |
| 3 | cannot support | 10/30/2013 11:58 AM |
| 4 | Sufficient competition must be defined. I don't believe it's the role of VDH to determine what constitutes competition in the private sector. I would fully support this strategy if there were a better determinant for time frames for total privatization of this activity. | 10/30/2013 11:29 AM |
| 5 | See prior responses - a full-cost public option is still needed. In most cases, do not support financial assistance for new systems as it encourages and subsidizes unaffordable rural housing. | 10/30/2013 11:25 AM |
| 6 | We prefer an encouraged strategy over mandated. We believe the concept of 70% goal is laudable but concerned a mandate is not the proper methodology to achieve the desired outcome | 10/30/2013 10:45 AM |
| 7 | I'm okay with certification letter being done by the private sector OSE. However, I am not okay with mandating that an end user seeking a construction permit in the future must use a private sector OSE and not give the owner the option of using the OSE with the same DPOR professional licensure at the local health dept. | 10/30/2013 10:38 AM |
| 8 | Policies to remove Conflict of Interest are essential to protect the client, environment and abide by the Regulations. | 10/30/2013 7:40 AM |

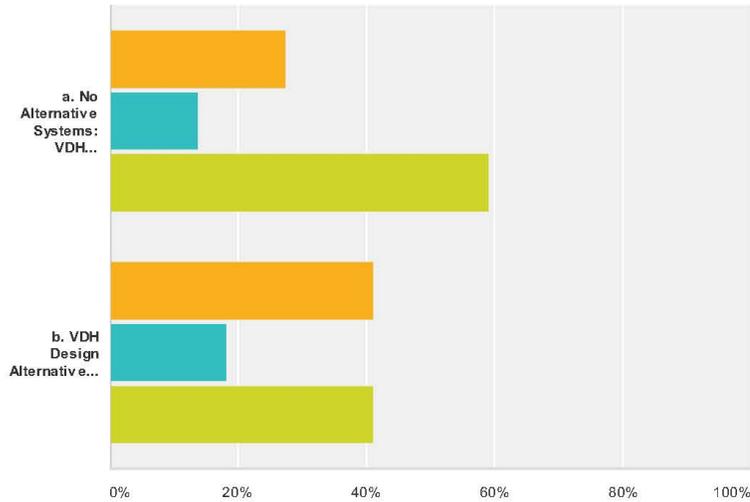
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| | | |
|----|--|---------------------|
| 9 | The only issue I have with implementing this is the caveat of "where there is sufficient competition". This will preclude southern and southwest Virginia and will prevent any competition from developing. If there is not work available then there will be no competition available and there will forever more be no work available. | 10/29/2013 11:49 PM |
| 10 | we must define competition. If VDH is required to keep a list in each district (as they use to do), then so long as there are at least two persons on the list, competition is in effect. What does low income relief mean? If it means indigent/means testing ok; if you are not indigent, then the low income relief must go. | 10/29/2013 11:42 PM |
| 11 | If we have in place an existing system where the OSE's are certified by the Commonwealth, why is there such hesitancy to accept a prior OSE's evaluation by other OSE's or the Health Department? Either we have a certification system for these individuals, and we hold them to the competency expectations, or we go to DPOR and report their shoddy work. Why create a "band aid" work-around so that we continue to condone this situation. I think the real, base problem here is that there should be one certification for septic system professionals, instead of the evaluator, designer, installer, etc. class system. | 10/29/2013 9:46 AM |
| 12 | Strike - "where there is sufficient competition and availability for low-income relief." | 10/29/2013 9:44 AM |
| 13 | Can VDH refuse to process an application made in accordance with existing Code and regulations? | 10/28/2013 4:42 PM |

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Q26 Alternative Systems:

Answered: 22 Skipped: 2



3: Fully support; able to live with it; will not actively work against it outside the process
 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process
 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion

| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total |
|---|---|--|---|-------|
| a. No Alternative Systems: VDH should continue its current practice of not producing alternative system designs. | 59.09% 13 | 13.64% 3 | 27.27% 6 | 22 |
| b. VDH Design Alternative Systems: To enable the VDH to build the capacity of its staff, properly licensed VDH designers should have more flexibility to design systems appropriate to the site conditions. In certain circumstances, VDH employees who are licensed Alternative Onsite Soil Evaluator should be allowed to design alternative systems. | 40.91% 9 | 18.18% 4 | 40.91% 9 | 22 |

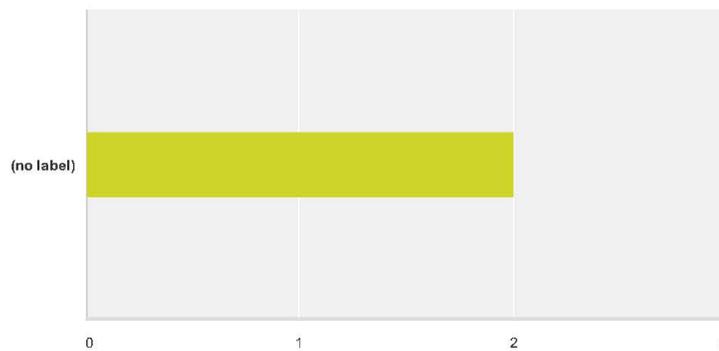
| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | Very appropriate in markets underseved by the private sector. | 10/30/2013 2:00 PM |
| 2 | VDH should not design alternative systems | 10/30/2013 11:31 AM |
| 3 | want a discussion on what the certain circumstnaces would be... | 10/30/2013 11:30 AM |

| | | |
|----|---|---------------------|
| 4 | VDH OSEs are licensed through the same agency as the private sector OSEs and have met the very same requirements as private OSEs. Therefore, they should be able to practice their skills within the agency similar to their private sector counterparts. | 10/30/2013 11:21 AM |
| 5 | Conflict of interest has been an issue and continues to be a significant concern, this is an internal policy issue which deserves discussion. | 10/30/2013 9:43 AM |
| 6 | So long as it does not take work from the private sector. VDH should be allowed to design any alternative systems only for public projects or when there is no apparent conflict of interest. | 10/30/2013 7:38 AM |
| 7 | A DPOR-licensed OSE is qualified to do this, so I disagree with the restriction. | 10/30/2013 6:38 AM |
| 8 | Nothing will allow me to support (b). How will the Nitrogen reduction requirements of the 613 regulations affect VDH direct service in the Chesapeake Bay Watershed? | 10/29/2013 9:45 AM |
| 9 | OSEs, regardless of who employs them, should be allowed to design any system for which they are qualified. Different categories of alternative systems could be specified without naming a specific product. | 10/28/2013 7:53 PM |
| 10 | I believe it may be appropriate for VDH staff to design alternative systems in the case of repairs. Care would need to be taken to avoid the appearance of a conflict of interest or of favoritism to a particular manufacturer. | 10/28/2013 5:03 PM |

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Q30 Revenue Neutral: To ensure that the shift to increased use of the private sector does not financially impair the VDH ability to continue to provide needed services, the VDH should reduce the application fees for applications with supporting work from an OSE/PE to a minimal amount (consider \$50-\$100?) and offset any revenue loss with new fees for other services (e.g., implement a fee for voluntary upgrade applications, courtesy reviews, some repairs, and “safe, adequate, and proper inspections”).

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 27.27% 6 | 45.45% 10 | 27.27% 6 | 22 | 2.00 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | Modest increases only | 10/30/2013 2:05 PM |
| 2 | a significant cost analysis is required; it doesn't seem that increasing costs of applications listed would offset the corresponding revenue loss | 10/30/2013 11:39 AM |
| 3 | no revenue loss if fee is set to reflect actual cost to the agency. | 10/30/2013 11:39 AM |
| 4 | More discussion. Safe, adequate and proper needs to become state policy and then a fee can be set to allow other fees to be altered. | 10/30/2013 11:34 AM |
| 5 | Maintain existing fee structure for OSE/PE applications and increase VDH fees for bare applications. Consider fees for courtesy and level 2 reviews. | 10/30/2013 11:32 AM |
| 6 | I fail to see how the charge of this group is to make this change revenue neutral to VDH | 10/30/2013 11:13 AM |
| 7 | do not support | 10/30/2013 11:09 AM |

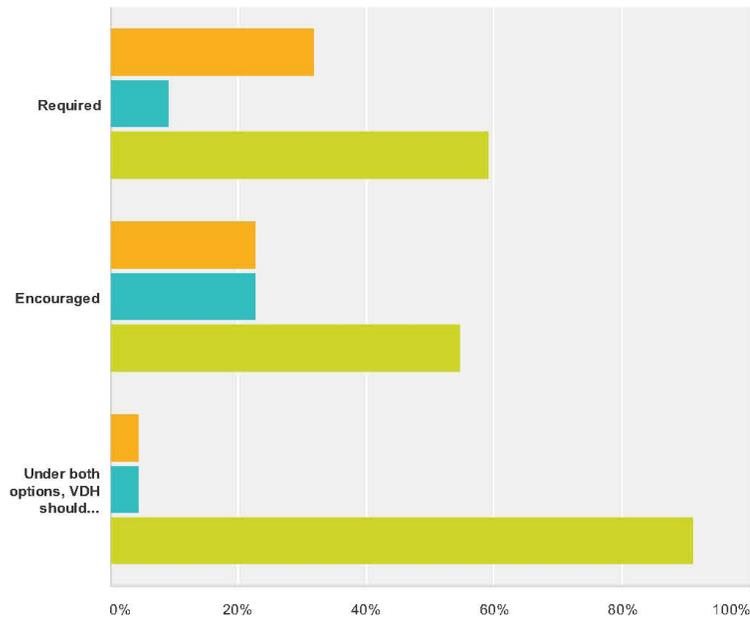
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| | | |
|----|--|---------------------|
| 8 | Data presented and corresponding calculations indicate the SHIFT is revenue neutral, the cost of delivering bare applications is a multiple of the fee, while cost of reviewing an OSE application is a fraction of the fee. | 10/30/2013 9:43 AM |
| 9 | There is a greater good in protecting human health and the environment by offering design services. Increasing costs to home owners hurts the home building industry and the economy. | 10/30/2013 6:42 AM |
| 10 | Some science should go into determining the administrative cost- rather than proclaiming \$50-\$100/application | 10/29/2013 10:34 PM |
| 11 | the amount should cover cost of review. VDH already screwed on restaurants | 10/29/2013 1:40 PM |
| 12 | Why is there a need to be revenue neutral? If VDH reduced their staff of 450 by 20, they would need \$1.4 million less dollars next year. How many employees voluntarily leave VDH each year? | 10/29/2013 9:45 AM |
| 13 | I'm not sure this would ultimately balance out to revenue neutral. I would like to see some projections on this. | 10/28/2013 7:53 PM |
| 14 | Fees are very political and depend on the legislature. If the private folks want to change VDH fees, they need strong political support from a champion in the legislature. | 10/28/2013 5:34 PM |
| 15 | I would prefer to see the fee for these applications come closer to covering the VDH cost for processing the applications, including level 2 reviews. | 10/28/2013 5:07 PM |

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Q6 Statewide Policy – Mandated OR Encouraged: VDH should implement as soon as possible a statewide policy that REQUIRES/ENCOURAGES applications for subdivision soil/site evaluation to use the private sector. See “Encouraging Options” below.

Answered: 22 Skipped: 2



- 3: Fully support; able to live with it; will not actively work against it outside the process
- 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process
- 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion

| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total |
|------------|---|--|---|-------|
| Required | 59.09% 13 | 9.09% 2 | 31.82% 7 | 22 |
| Encouraged | 54.55% 12 | 22.73% 5 | 22.73% 5 | 22 |

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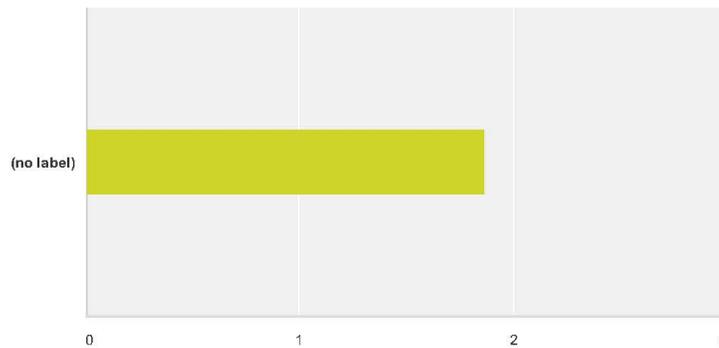
| | | | | |
|---|--------------|------------|------------|----|
| Under both options, VDH should continue the current practice of reviewing private sector work for Subdivision Approval and conveying the approval to local governments. Reviews included paperwork and filed review as determined necessary by VDH. | 90.91% 20 | 4.55% 1 | 4.55% 1 | 22 |
|---|--------------|------------|------------|----|

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|---|---------------------|
| 1 | My answer to "required" would be a 2 if the question included the phrase, where a proven number of AOSE's provide service to demonstrate or create a reasonable level of competition in the marketplace. | 10/30/2013 1:19 PM |
| 2 | Site evaluations for this purpose are "feasibility studies" and are speculative in nature. VDH should not be in the land development business. | 10/30/2013 11:28 AM |
| 3 | See prior answer on public option. | 10/30/2013 11:18 AM |
| 4 | considering the current situation why is regulatory action required? | 10/30/2013 9:58 AM |
| 5 | Subdividing land is a local government process and, as such, should remain able to let localities choose how they want to subdivide the land in their county. | 10/30/2013 9:46 AM |
| 6 | multiple lot certification letters must be included as well as single lot certification letters. No subdivision approval or certification letter provides a direct public health threat. | 10/29/2013 11:42 PM |
| 7 | I performed 2 so called "subdivisions" in Russell County in 2012 but my client was forced to submit them as multiple lot certification letters. This meant VDH was able to charge for each lot whereas as a subdivision they would not be allowed to charge for each lot. This is a money racket! These counties may not be doing many subdivisions anymore but you should investigate the prevalence of processing multiple lot certification letters. | 10/29/2013 11:38 PM |
| 8 | I just don't think VDH should do subdivisions- for numerous reasons | 10/29/2013 6:08 PM |
| 9 | There is no position on subdivision work that would ever be acceptable. | 10/29/2013 9:44 AM |
| 10 | Do not support "required" language | 10/29/2013 9:29 AM |
| 11 | Home owners I've spoken with always want the option | 10/28/2013 8:32 PM |
| 12 | Still thinking about this one..... I'm not sure it should be a requirement that all subdivision work be conducted by the private sector. | 10/28/2013 6:51 PM |
| 13 | mandated or Encouraged isn't a single option you have to answer both questions to move ahead of the questionnaire.. | 10/28/2013 4:43 PM |
| 14 | How will this affect the local health department relationship with local governments? | 10/28/2013 4:27 PM |

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Q24 Internal Staff Evaluation: As the number of soil evaluations/designs undertaken by the VDH decline, VDH will need to change its employee work profiles so that employee performance is driven by realistic objectives and not a value of "X" number of permits issued per month.

Answered: 22 Skipped: 2



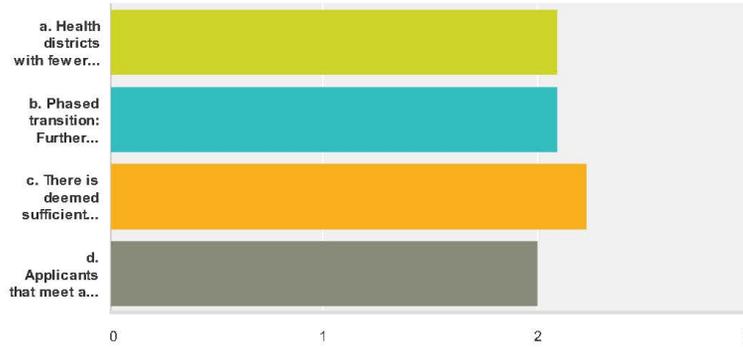
| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 40.91% 9 | 31.82% 7 | 27.27% 6 | 22 | 1.86 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | IT should be driven by efficient processing of permit applications by the private sector. | 10/30/2013 2:00 PM |
| 2 | VDH does not currently use, and should never use, a production 'quota' of permits issued per month. The VDH EH staff do many programs of which onsite is one and all are directly involved with public health protection. A production quota of "X" permits per month is out of touch with the agency's mission of public health protection. | 10/30/2013 11:21 AM |
| 3 | I do not believe it is the role of this group to micromanage how the Department of Health reviews their employees | 10/30/2013 10:59 AM |
| 4 | Employer/employee policy outside our interests. The employee work profile would logically not be in conflict with DPOR license board expectations for competency or work expectations. Incompetence would clearly be judged outside of employers expectations. | 10/30/2013 9:43 AM |
| 5 | this question smells | 10/29/2013 1:38 PM |
| 6 | I don't support the system on which this assumption is based. | 10/29/2013 10:10 AM |
| 7 | Why do we care about VDH internal issues? | 10/29/2013 9:45 AM |
| 8 | Clearly the VDH work profile will change as the nature of the work changes. Policy governing training, performance, and other things will evolve with the evolution of the work being done. VDH naturally is concerned with maintaining proficiency. VDH does not now have a work requirement of some specific number of permits per month. | 10/28/2013 5:30 PM |
| 9 | The matter of how best to describe and evaluate the work of employees is an internal function of the organization and no attempt to mandate an action affecting that matter should be made by this committee. | 10/28/2013 5:03 PM |

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Q9 Exemption Options for “Mandated Strategy” and “Policy Target” Approaches above:

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|---|---|--|---|-------|----------------|
| a. Health districts with fewer than (X) applications per month could be exempt from this requirement. This will be helpful in low-income counties. [The amount of "X" will be discussed on Thursday] | 22.73% 5 | 45.45% 10 | 31.82% 7 | 22 | 2.09 |
| b. Phased transition: Further recognizing underserved counties with few application submissions per year, health districts/counties with (X) or fewer applications per month will have two years under the exemption to transition to the newly adopted policy. [The amount of "X" will be discussed on Thursday] | 27.27% 6 | 36.36% 8 | 36.36% 8 | 22 | 2.09 |
| c. There is deemed sufficient competition if there are two or more private providers who live within 30-miles of the project. | 18.18% 4 | 40.91% 9 | 40.91% 9 | 22 | 2.23 |
| d. Applicants that meet a low income "means test" would be offered relief from a fund. The fees would not be lowered, but funds to pay the fees would be given to the OSE or VDH. | 36.36% 8 | 27.27% 6 | 36.36% 8 | 22 | 2.00 |

| # | Comments for "a. Health districts with fewer than (X) applications per month could be exempt from this requirement. This will be helpful in low-income counties. [The amount of "X" will be discussed on Thursday]" | Date |
|---|---|---------------------|
| 1 | Home owners want to chose Private or Public, are asking for choice | 10/30/2013 4:47 PM |
| 2 | do not support mandated or policy target strategy | 10/30/2013 11:58 AM |

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| | | |
|----------|--|---------------------|
| 3 | I am still a proponent of total privatization of the site evaluation and design process. Maybe VDH could consider RFP's in these areas for private sector regulants to provide these services on an annual basis. If the proposals are over budget then VDH can continue providing these services. Something should be done to simulate privatization in these areas. Low income still receives public assistance. | 10/30/2013 11:29 AM |
| 4 | see prior answers. How do you reach an appropriate "x" statewide? | 10/30/2013 11:25 AM |
| 5 | As we oppose the mandate we must oppose waivers to the mandate -- everyone should be waived. | 10/30/2013 10:45 AM |
| 6 | The number of applications in a locality vary significantly over the course of a year due to seasonal development. May be more time consuming but alos more accurate to look at annual onsite construction permit applications instead of monthly. | 10/30/2013 10:38 AM |
| 7 | We could agree providing the control of Conflict of Interest and local ordinances are factors in these alleged "low income" population. Standardization of the onsite evaluation and design are expectations which protects the citizen, and his neighbors. Who delivers those services are subject to market forces, only the means tested seem entitled to reduced price services. | 10/30/2013 7:40 AM |
| 8 | so long as we agree on the base number of "x". | 10/29/2013 11:42 PM |
| 9 | Health districts with fewer than (X) applications per month, and/or the travel time of the closest AOSE (sic) is equal to or greater than X, could be exempt from this requirement. | 10/29/2013 10:06 PM |
| 10 | There are a lot of costs associated with construction. Why is the design of the septic system the only thing that is to be considered when it comes to aiding the poor? | 10/29/2013 10:01 PM |
| 11 | Again, SERCAP or similar group could/should provide. The group must be FUNDED | 10/29/2013 1:27 PM |
| 12 | Please see my previous comments.... | 10/29/2013 9:46 AM |
| 13 | This is too complicated to be a statewide solution. | 10/29/2013 9:44 AM |
| 14 | Does a low income district directly correlate with low number of applications? Low building rates due to other factors could lead to unintended exemptions. | 10/28/2013 7:14 PM |
| 15 | x ? | 10/28/2013 5:01 PM |
| 16 | I'm not sure that the number of applications per month is an appropriate indicator and would need some explanation of why it would be appropriate. Also, need more review of the proposed policy. | 10/28/2013 4:42 PM |
| # | Comments for "b. Phased transition: Further recognizing underserved counties with few application submissions per year, health districts/counties with (X) or fewer applications per month will have two years under the exemption to transition to the newly adopted policy. [The amount of "X" will be discussed on Thursday]" | Date |
| 1 | Home owners want to chose Private or Public, are asking for choice | 10/30/2013 4:47 PM |
| 2 | I do not believe the private sector will ever be able to be of sufficient size in small markets to competitively serve the same. | 10/30/2013 1:41 PM |
| 3 | do not support mandated or policy target strategy | 10/30/2013 11:58 AM |
| 4 | see prior answers. What happens if the private sector fails to fill the gap in the two-year exemption period? | 10/30/2013 11:25 AM |
| 5 | We are opposed to the mandate regardless of timing | 10/30/2013 10:45 AM |
| 6 | Don't understand why there is a two year mandate to transition when the monthly applications may never rise to an action number as noted in item 'a'. | 10/30/2013 10:38 AM |
| 7 | Incentives must be in place to foster applicants interest in consultant based services. Counties in competition w/ consultants must see review fees significantly reduced. Permit turn-around time must be accordance w/ QA/QC policy (95% reviewed & issued w/in 5 days) | 10/30/2013 7:40 AM |
| 8 | Placing a time limit on the county does not necessary build private-sector design capacity. The county is not responsible for building such capacity. | 10/30/2013 6:19 AM |
| 9 | amount of X ? | 10/29/2013 1:27 PM |
| 10 | ditto | 10/29/2013 9:46 AM |
| 11 | This is too complicated to be a statewide solution. | 10/29/2013 9:44 AM |
| 12 | See 9.a response. What happens at the end of two years if application rates are still below X? | 10/28/2013 7:14 PM |
| 13 | x? | 10/28/2013 5:01 PM |
| 14 | See a above. | 10/28/2013 4:42 PM |

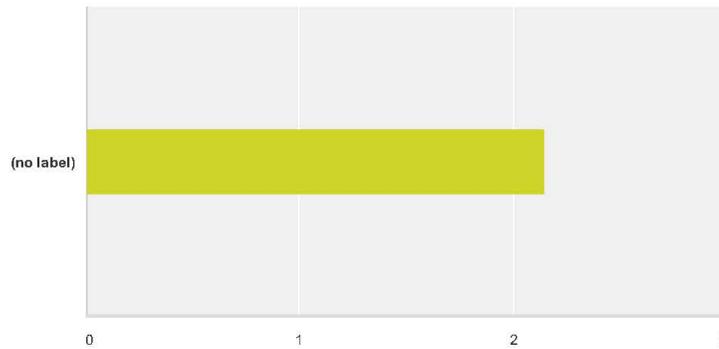
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| # | Comments for "c. There is deemed sufficient competition if there are two or more private providers who live within 30-miles of the project." | Date |
|----|--|---------------------|
| 1 | Home owners want to chose Private or Public, are asking for choice | 10/30/2013 4:47 PM |
| 2 | do not support mandated or policy target strategy | 10/30/2013 11:58 AM |
| 3 | VDH limiting private enterprise. I'll never support any proposal that uses this concept. | 10/30/2013 11:29 AM |
| 4 | This creates a provider duopoly. Based on current market conditions we do not believe the government should determine what level of competition is appropriate -- let the markets decide (including VDH participation) | 10/30/2013 10:45 AM |
| 5 | 30 miles is a random number. Why not consider a web-base bid process so that any private OSE can bid on the project and incur the mileage if so chosen. My district has no private OSEs within 30 miles of most of the district. One lives in TN some 50 miles from the Virginia state line. | 10/30/2013 10:38 AM |
| 6 | Support with 60 miles | 10/30/2013 7:40 AM |
| 7 | This is too restrictive and will allow VDH to maintain a strangle hold on most of Virginia. | 10/29/2013 11:49 PM |
| 8 | "two or more providers as listed on the VDH approved/recognized list of licensed individuals who perform services in that district" should ----strike everything else. It is a state license, not a County one and many professionals work across the entire state, at their discretion. | 10/29/2013 11:42 PM |
| 9 | need more than 2 | 10/29/2013 1:27 PM |
| 10 | What if the provider lives in another border state? Are we really going to change our system to benefit out-of-state providers. | 10/29/2013 9:46 AM |
| 11 | This is too complicated to be a statewide solution. | 10/29/2013 9:44 AM |
| 12 | Private providers are not always "active" providers. Also, 30 miles is not far to drive for work. Office location should be also considered, not just "living" within a certain distance. | 10/28/2013 7:14 PM |
| 13 | If "live" means the private provider actually works within 30 miles AND intends to provide services in the affected jurisdiction. | 10/28/2013 5:06 PM |
| 14 | 45 miles | 10/28/2013 5:01 PM |
| 15 | Why 30 miles? Some distance might be appropriate. | 10/28/2013 4:42 PM |
| # | Comments for "d. Applicants that meet a low income "means test" would be offered relief from a fund. The fees would not be lowered, but funds to pay the fees would be given to the OSE or VDH." | Date |
| 1 | do not support mandated or policy target strategy | 10/30/2013 11:58 AM |
| 2 | Confusing. Applicants that meet this "test" should have the option of VDH or private sector involvement with no funding differences with the exception of regulatory relationships with state or federal funding agencies. | 10/30/2013 11:29 AM |
| 3 | I would agree if it were limited to existing systems or if, as a policy, is designed to prevent the building of unaffordable rural units. Otherwise, we are passing the additional costs to the consumer and the state while creating new unaffordable units. It also creates an unintended consequence - encourages unnecessary conversion of agricultural and forested lands to residential use. | 10/30/2013 11:25 AM |
| 4 | Is this true of new construction or repair? Why should other homeowners subsidize the creation of a new system? | 10/30/2013 10:45 AM |
| 5 | There already exists a fee waiver protocol for low income owners that VDH can utilize. As noted in Policy Target 8, there seems to be no private OSE interest in low income due to the absence of profitability. | 10/30/2013 10:38 AM |
| 6 | VDH is already required to provide free soil evaluation services for these citizens (required by Code of Virginia). Fund should not be used by government to compete with small businesses. | 10/29/2013 11:42 PM |
| 7 | Too many questions and listening to do to formulate a meaningful response at this time | 10/29/2013 10:06 PM |
| 8 | there is already a mechanism for low income that could be tweaked. | 10/29/2013 1:27 PM |
| 9 | This is too complicated to be a statewide solution. | 10/29/2013 9:44 AM |
| 10 | I believe that the current policy for indemnification and other aid is to give the funds directly to the homeowner. I would like to see that changed to have them paid jointly to the homeowner and OSE/VDH/installer. | 10/28/2013 7:14 PM |
| 11 | Need more information regarding how this fund will be authorized and funded. I don't want to see the need more information regarding how this fund will be authorized and funded. I don't want to see the low income folks left depending on the development of a fund which may never actually be adequately funded. | 10/28/2013 5:06 PM |
| 12 | Depends on where the money would come from. I can support the concept of such a fund, but if VDH would need to fund it from it's existing budget, that is a problem. | 10/28/2013 4:42 PM |

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Q8 Policy Target Strategy (with Exemptions below): VDH should adopt a policy equivalent to the “Hanover/Chickahominy Policy” and apply it uniformly and statewide. This policy aims for a minimum of 70% private sector and 30% VDH provided onsite septic soil evaluation/design work. The 30% should be reserved primarily for low-income (means-tested) and repair situations. VDH should be the provider of direct delivery of new construction services as a last resort.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 22.73% 5 | 40.91% 9 | 36.36% 8 | 22 | 2.14 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|---|---------------------|
| 1 | Home owners want to chose Private or Public, are asking for choice | 10/30/2013 4:47 PM |
| 2 | I believe creating such threshold would be difficult to manage and should not be implemented in a market where there is not an enviroment of competition in the private sector. | 10/30/2013 1:41 PM |
| 3 | cannot support | 10/30/2013 11:58 AM |
| 4 | The policy should be 100 percent statewide with local options for low-income, emergency etc. | 10/30/2013 11:29 AM |
| 5 | Full-cost public option prevents price-gouging. Subsidized public option for new systems has unintended consequence of encouraging new unaffordable units in rural areas - far removed from jobs and services. | 10/30/2013 11:25 AM |
| 6 | While supportive of the goals, asabove we believe VDH should remain a provider. We anticipate such "new construction" would include modular homes where VDH as a provider could be the only viable economic option. | 10/30/2013 10:45 AM |

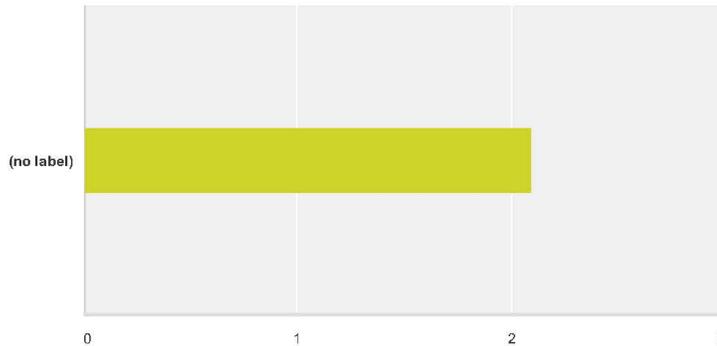
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| | | |
|----|---|---------------------|
| 7 | Why choose one district as an example where there are 34 other districts not implementing this "policy". There may be internal reasons Chickahominy uses private sector 70% of the time that other districts do not find advantageous. Why should VDH only do the low-income situations - because there's no money in it for private OSEs? It's all public health protection and should not be profit driven. | 10/30/2013 10:38 AM |
| 8 | My only concern is how does this get implemented and regulated. | 10/30/2013 10:31 AM |
| 9 | Chickahominy seems to have worked without problems for over 5 years. If VDH is going to offer direct services there should a means test, and a provision to confirm whether the applicant understands the limitations to public services. | 10/30/2013 7:40 AM |
| 10 | VDH staff must perform the work product same as private sector. VDH must be required to prepare backlog reports and schedule work accordingly with GMP 51 or equivalent. Work to be equally reviewed under VDH QA/QC policy and a statewide program that involves the same number of profiles (min of 3) to change or alter a site. While VDH ignores current QA/QC policy for level II reviews, many times additional costs are added to the site thereby decreasing "affordability". If we all must have three pits to approve/deny a site; this will create a more homogeneous environment for level II reviews and decrease VDH fee manipulation/abuse. | 10/29/2013 11:42 PM |
| 11 | Standardization needs to added for fairness and to keep VDH OSE's experienced in doing the work they review. | 10/29/2013 10:01 PM |
| 12 | And who is going to keep tabs on the percentages of actual work in the districts? The OSE organizations? They seem to have become adept at parsing through all of VDH's spreadsheets on a constant basis, but is that what we need? Someone looking over VDH's shoulder every second. | 10/29/2013 9:46 AM |
| 13 | This is too complicated to be a statewide solution. | 10/29/2013 9:44 AM |
| 14 | I'm not sure the 70/30 minimum can be achieved in some areas of the state in a short time frame. | 10/28/2013 7:14 PM |
| 15 | Again, why stratify based on income? VDH has closed most or all of its general medical providing general health care for adults with the result that private physicians have to pick up the load. This is an analogous situation. | 10/28/2013 5:06 PM |
| 16 | What exactly is the "Hanover/Chickahominy Policy"? | 10/28/2013 4:42 PM |

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Q12 Enforcement: VDH should better enforce the requirement that construction permits only be issued when the applicant intends to build within 18 months.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 27.27% 6 | 36.36% 8 | 36.36% 8 | 22 | 2.09 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|--|---------------------|
| 1 | I believe the 18 month period is to short and how do you define onesintention. | 10/30/2013 1:41 PM |
| 2 | need more information. | 10/30/2013 11:58 AM |
| 3 | Why is 18 months critical? | 10/30/2013 11:29 AM |
| 4 | There are no tools for better enforcement | 10/30/2013 11:19 AM |
| 5 | The unintentional consequence results in mandating the timing of the construction of lots. Government already has control of most of the other variablesbut not timing. Due to dynamic market changes, it could be a site was designed and not acted on for years. Such delay does not change the validity of the design. While the law is already on the books, the lack of enforcement is a recognition of market reality. | 10/30/2013 10:45 AM |
| 6 | There is currently a policy to allow a one-time extension of 18 additional months if the owner has begun installing the system or has a valid building permit. That policy needs to remain in effect to assist home building. | 10/30/2013 10:38 AM |
| 7 | Have not realize this is an issue, I would prefer better understanding prior to endorsing this issue. | 10/30/2013 7:40 AM |
| 8 | Unenforceable. only the applicant knows what and when they will build. Most if not all professionals already inform the client of these expectations. | 10/29/2013 11:42 PM |
| 9 | This is a professional call- 18 months shouldn't be hard and fast if there are circumstances - this doesn't necessarily "protect public health" . | 10/29/2013 10:06 PM |
| 10 | I am not sure about the relevance of this question with regard to promoting private sector OSEs. | 10/29/2013 10:01 PM |
| 11 | the road to hell is paved with "intentions" | 10/29/2013 1:27 PM |
| 12 | Totally unenforceable. | 10/29/2013 9:44 AM |
| 13 | I don't understand the reason for this requirement. | 10/28/2013 7:14 PM |
| 14 | Difficult to enforce. | 10/28/2013 4:42 PM |

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Q4 Affordability: Safeguards must be in place to ensure onsite septic systems remain affordable to low to moderate-income people. The VDH should remain a provider of last resort.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 22.73% 5 | 40.91% 9 | 36.36% 8 | 22 | 2.14 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|---|---------------------|
| 1 | I believe affordability is important to sectors purchasing or building homes in Virginia. I do not believe the affordability issue should be limited to the low and moderate income households. | 10/30/2013 1:14 PM |
| 2 | Agree that VDH must be able to provide services to low and moderate income. Do not agree that VDH is only a provider of last resort. Better wording is VDH must remain an option. | 10/30/2013 11:58 AM |
| 3 | Agree only to the extent that the wording is modified to onsite septic system site evaluations and designs remain affordable to low income homeowners. (based on some federal guideline) | 10/30/2013 11:28 AM |
| 4 | On the first point: I agree for existing systems or in cases of emergencies (existing public health issue). But not for new construction. Too often the homes these systems serve are, in and of themselves, unaffordable. Locating new housing in remote rural areas only increases the likelihood that more homeowners would struggle to cover the cost of these systems and would seek financial assistance. As a policy, why would we further subsidize new homes far removed from growth areas, job centers (requiring car), and services? Financial assistance for existing systems recognizes a problem and tries to correct it. Financial assistance for new systems suggests we want to create more unaffordable housing that is subsidized for the life of the system. On the second point: I believe VDH should continue to offer these services - not just as a provider of last resort. But the program should pay for itself and the full cost of these services should be recognized in the fee. This will provide an opportunity for the private sector to compete. It will serve to regulate price-gouging as well, setting a baseline for reasonable service costs. | 10/30/2013 11:18 AM |
| 5 | Last sentence should be deleted. | 10/30/2013 11:12 AM |
| 6 | Remove the last three words of the principle and we can support it. | 10/30/2013 9:54 AM |

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| | | |
|----|--|---------------------|
| 7 | I don't think affordability should be a concern in this discussion. We don't regulate the cost of home construction to insure affordability. If it is addressed, repairs are the only situations that should be concerned with affordability. | 10/30/2013 8:30 AM |
| 8 | Will endorse provided: 1. written policy, with documentation & record keeping; 2. Means tested 3. All design by Licensed OSE/PE with standardized work product expectation | 10/30/2013 7:09 AM |
| 9 | The two third-party privatization evaluation reports provided by VDH at the first meeting indicate that the infrastructure needed for full privatization does not exist today in certain areas of the Commonwealth. Industry's concern is that the transition is conducted in a manner that ensures there is adequate design capacity at all times, whether from the public or private sector, or both (i.e., progressive transition), to serve system design needs. | 10/30/2013 6:06 AM |
| 10 | Affordability is driven by Regulatory expectations/requirements. Local requirements and fees above and beyond the state minimum also drive up cost. Affordable is a relative term that is only applicable to complying with Regulatory requirements. Furthermore, VDH has done nothing to test or investigate system type distributors where as there may be lacking sufficient competition on the material side of the equation. Promoting conventional systems where as alternative systems would normally be required has limited the material suppliers. At best, there are only several major equipment distributors statewide. This drives up cost due to a lack of competition. | 10/29/2013 11:41 PM |
| 11 | Records obtained from Cumberland Plateau Health District show that less than 5% of all applications are for income A. As long as VDH is the provider of last resort for income A applications only I would not work against this, however VDH should not be the low cost provider of last resort for all applications should they not want to pay the actual normal cost of services in a given area and instead receive subsidized services. I am speaking of course for non-income A applications. | 10/29/2013 11:33 PM |
| 12 | Can we ask the real estate agent and builder representatives if it would be OK to have county employed real estate agents, architects, and contractors? This could surely help low to moderate-income people and probably boost the housing market. | 10/29/2013 9:35 PM |
| 13 | I would change the last line to: Given the concern over affordability, the VDH should remain a provider. | 10/29/2013 6:05 PM |
| 14 | Support SERCAP or some similar group/organization being funded to provide | 10/29/2013 1:16 PM |
| 15 | If affordable means violating the regulations, then it is an unsupportable position. | 10/29/2013 9:44 AM |
| 16 | Lawyers and physicians provide services and/or care to low to moderate income people. If the private sector wants the paying business, they should be prepared to provide services to the low and moderate income people as well. I worry about proficiency if VDH only acts as the provider of services to a small group who can't afford the private sector. | 10/28/2013 4:50 PM |
| 17 | cost of doing business should not be dictated by the health dept. | 10/28/2013 4:36 PM |

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Q19 Independent Review Expectations:
When the VDH performs onsite septic work, for quality assurance they will be subject to Level 2 reviews equivalent to and at the same percentage of private OSEs. Specifically, a Level 2 review will be conducted by an independent source, such as Virginia Tech extension agent, or equivalent. Therefore, if a local jurisdiction requires OSE/PE work to have 100% level 2 reviews, then VDH staff will have 100% Level 2 reviews.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 36.36% 8 | 27.27% 6 | 36.36% 8 | 22 | 2.00 |

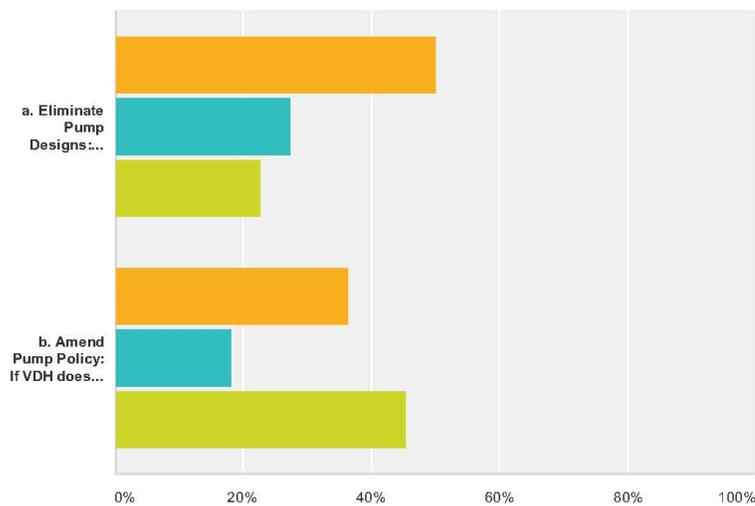
| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | They should be evaluated on their services by their direct reports, but otherwise this proposal is silly. | 10/30/2013 1:55 PM |
| 2 | Not sure there are adequate funds to implement such requirement. | 10/30/2013 11:33 AM |
| 3 | This does not appear to be realistic. The extension offices of many localities are very short staffed and not trained nor have the time to become trained to conduct third party Level 2 reviews. Local jurisdictions are just that - locally governed. Again, SHIFT should not be telling local governments how they must develop their land. | 10/30/2013 11:06 AM |
| 4 | need more information from VDH on impacts of this change. | 10/30/2013 10:56 AM |
| 5 | Unresolved questions: shall the cost of level II review be borne by applicant or tax payer (local or state)? Would increased fees show a benefit over the validation of the design by the licensed OSE, and review for compliance by a code official? | 10/30/2013 9:46 AM |
| 6 | This is the health department- there must be not only lee-way but they are the authority- I so not agree with independent review. | 10/29/2013 10:27 PM |

| | | |
|----|--|---------------------|
| 7 | I think you meant VT soil scientist. | 10/29/2013 1:35 PM |
| 8 | Has anyone asked the Extension Service if they have the manpower or budget to provide these new services? | 10/29/2013 10:03 AM |
| 9 | I have no trust of the VDH process. There is no "independence" within VDH. If VDH does any field work - it must be under the direct supervision of a licensed OSE. | 10/29/2013 9:45 AM |
| 10 | I could live with VDH not having an equal percentage of Level 2 reviews since their "mandate" is to protect the public health versus the private sector's profit motive. But there should be some amount of Level 2 reviews for VDH work also. | 10/28/2013 7:39 PM |
| 11 | VDH is the regulator. Private OSEs should expect that the regulators operate under different rules. Virginia Tech has not the expertise to perform these reviews. If VDH is out of the design business, then this is not an issue. | 10/28/2013 5:23 PM |
| 12 | Cost in both time and money. | 10/28/2013 4:57 PM |

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Q27 Pump Systems: VDH should implement a policy regarding VDH performing conventional pump system designs. There are two options:

Answered: 22 Skipped: 2



- 3: Fully support; able to live with it; will not actively work against it outside the process
- 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process
- 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion

| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total |
|--|---|--|---|-------|
| | | | | |

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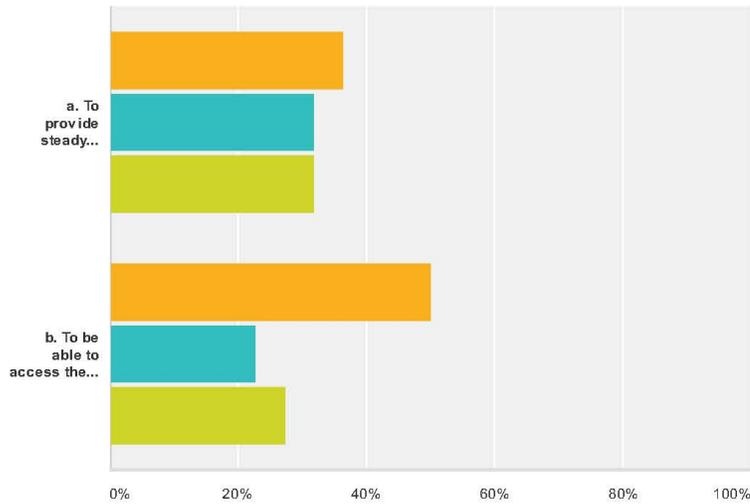
| | | | | |
|---|--------------|-------------|-------------|----|
| a. Eliminate Pump Designs: Substantially eliminate VDH direct delivery of pump system designs for construction permits. (Provisions could be made for VDH performing this service for the low income or in the case of extenuating circumstances.) Provisions should be made for informing an applicant submitting a bare application that VDH will not design pump systems and, if the applicant's site conditions mandate that a pump is required, he will have to go to the private sector designer to complete the design. The applicant should be encouraged to contact the private sector prior to submitting the application and paying fees if the applicant believes that their situation may require a pump system. (This is not intended to prevent the applicant from applying to VDH, but it is focused on making sure they understand the limitations of using VDH before making an application.) | 22.73% 5 | 27.27% 6 | 50% 11 | 22 |
| b. Amend Pump Policy: If VDH does continue to design pump systems, VDH should come up with categories of pumps in order to comply with the policy barring the use of proprietary products in designs while ensuring the installation of pumps with proper specifications. | 45.45% 10 | 18.18% 4 | 36.36% 8 | 22 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|---|---------------------|
| 1 | A component of their regulatory role. | 10/30/2013 2:00 PM |
| 2 | could add significant costs and processing time to repair applications | 10/30/2013 11:35 AM |
| 3 | Why does SHIFT keep coming back to 'low income'? This seems to exploit a profit driven agenda instead of public health protection. Sewage is sewage and low income sewage systems malfunctioning will make people just as sick. VDH should still issue pump system construction permits. | 10/30/2013 11:21 AM |
| 4 | do not support A - Need more info on B | 10/30/2013 10:59 AM |
| 5 | Pump design is engineering, and requires consideration of the origin, receiving environment and conveyance. All pump design must be under responsible charge. Conflict of interest may arise in selecting proprietary products as each pump curve fits a product- there is no generic pump. | 10/30/2013 9:43 AM |
| 6 | Government agencies are not allowed to pick winners and losers. There is no clear path around this since VDH approves the materials/manufactures | 10/30/2013 7:38 AM |
| 7 | A DPOR-licensed OSE is qualified to do this, so I disagree with the restriction. | 10/30/2013 6:38 AM |
| 8 | Now we have private sector trying to over regulate the public sector- no ! | 10/29/2013 10:31 PM |
| 9 | pump to gravity is simple enough | 10/29/2013 1:38 PM |
| 10 | Pumps are the same as alternative systems. VDH must stop this practice. | 10/29/2013 9:45 AM |
| 11 | VDH should continue to be able to design pump systems. Establishing categories would be very helpful. | 10/28/2013 7:53 PM |
| 12 | a. Disagree with 2 sets of rules, one for the poor and one for the rest. b. Specifying pump performance seems sufficient to me. Perhaps the private guys have an idea of what they mean by categories of pumps. I may not understand. | 10/28/2013 5:30 PM |
| 13 | In the case of 'a', it would lead to delay for the applicant and isn't justified, particularly in the case of repairs. For 'b' I'd like to know what is meant by "categories of pumps." | 10/28/2013 5:03 PM |

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Q28 Indemnification Fund: The Indemnification Fund should be expanded in addition to its current purpose to assist low-income citizens by subsidizing OSE/PE work. To assure checks and balances, it should be managed by an independent agent, such as DPOR or the Department of Planning and Budget.

Answered: 22 Skipped: 2



- 3: Fully support; able to live with it; will not actively work against it outside the process
- 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process
- 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion

| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total |
|--|---|--|---|-------|
| a. To provide steady funding into the Indemnification Fund, a portion of OSE certification/renewal fees should be allocated for the Fund. | 31.82% 7 | 31.82% 7 | 36.36% 8 | 22 |
| b. To be able to access the Indemnification Fund, the OSE must offer a 1-year warranty and a 2-year window to make a claim (i.e., have to notify installer there's a problem within the 1-year window, and make the claim within 2 years). | 27.27% 6 | 22.73% 5 | 50% 11 | 22 |

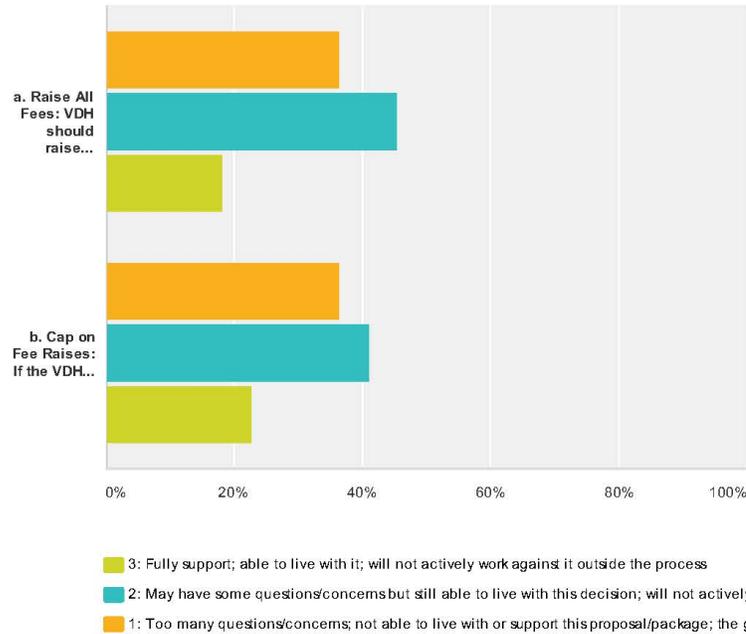
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| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|--|---------------------|
| 1 | we need to discuss. | 10/30/2013 3:40 PM |
| 2 | I think they should be required to office this warranty to all systems designed and constructed | 10/30/2013 2:05 PM |
| 3 | Agree in concept. But, indemnification fund is for a different purpose. Would support a new grant or loan remediation fund to assist low income individuals | 10/30/2013 11:39 AM |
| 4 | have concerns about the use for new systems in certain areas. My concern does not extend to replacement systems. | 10/30/2013 11:39 AM |
| 5 | The Indemnification Fund was legislated. Therefore, this is an issued that needs further discussion before altering the intended use of these monies. | 10/30/2013 11:34 AM |
| 6 | Indemnification is for VDH only. Private OSE should provide warranty or covered by liability insurance. | 10/30/2013 11:32 AM |
| 7 | Indemnification is a legal term, the fund is under GA mandate, the fees are collected against every applicant. Determination of responsibility for a system failure may find the owner, contractor, designer, or the regulation at full or partial fault. It would be beneficial to review a report of findings from the IF study. | 10/30/2013 9:43 AM |
| 8 | The indemnification fund should no longer be used as an insurance policy for VDH staff. The fund is not available for private designers yet our applications still have to pay into the fund. The OSE is responsible for their work whether they are VDH staff or private. | 10/30/2013 12:01 AM |
| 9 | The indemnification fund is for VDH design projects and it should only be funded by VDH design projects. | 10/29/2013 9:45 AM |
| 10 | I do not agree that the indemnification fund should be used to subsidize private sector work. Its original intent was to provide relief to owners of systems when some mistake by the health department lead to the system failure. Another fund could be set up to assist low income folks. | 10/28/2013 7:53 PM |
| 11 | Liability costs are part of working in the private sector. The private sector can obtain insurance to protect themselves on the private market. | 10/28/2013 5:34 PM |
| 12 | Funding | 10/28/2013 5:07 PM |

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Q31 VDH Fee Raises: VDH should raise at least some of its fees, which would require legislative action.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total |
|--|---|--|---|-------|
| a. Raise All Fees: VDH should raise all septic fees, incrementally and gradually. | 18.18% 4 | 45.45% 10 | 36.36% 8 | 22 |
| b. Cap on Fee Raises: If the VDH does raise its fee, there should be a clear cap established for any fee increases of no greater than 20%, ideally less. | 22.73% 5 | 40.91% 9 | 36.36% 8 | 22 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | VDH must give an actual accounting of what the onsite program FTE requirements are needed. Many general assembly reports provide data that is well beyond or below what staff are using. Without a "timesstudy", there is no way to determine an appropriate fee schedule with being arbitrary and capricious. | 10/30/2013 3:40 PM |
| 2 | HBAV would oppose any fee increase that would not be modest. | 10/30/2013 2:05 PM |
| 3 | This requires a more detailed cost analysis. | 10/30/2013 11:39 AM |

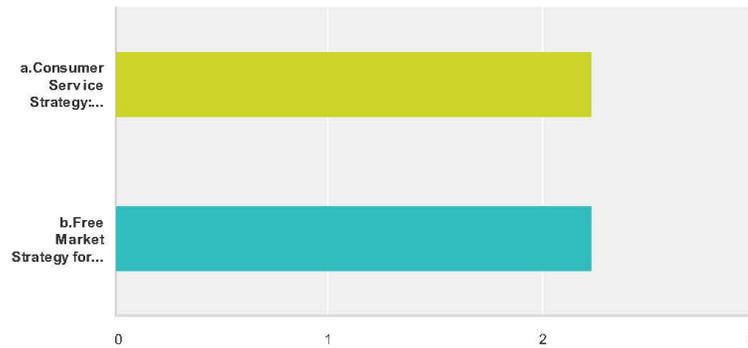
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| | | |
|----|---|---------------------|
| 4 | fees should be set to reflect the cost to the agency to provide the service in question. | 10/30/2013 11:39 AM |
| 5 | Since the Allen administration (I think?) budget cuts to agencies, fees have been allowed to offset budget cuts. The onsite sewage program is in the interest of all the citizens of the Commonwealth and, as such, these fees are set every budget cycle to maintain the program with level funding and not to reflect the total cost of one site evaluation but rather to continue protecting all of the health and safety of the public we serve. This and other state regulated programs need to be overseen by neutral professionals with no profit motive to better ensure the safe and sanitary disposal of sewage is conducted. | 10/30/2013 11:34 AM |
| 6 | Has this been thoroughly explored? With the exception of raising fees for bare applications I see no reason to raise other fees unless shown by VDH economists. | 10/30/2013 11:32 AM |
| 7 | do not support | 10/30/2013 11:09 AM |
| 8 | fees should cover cost of services without subsidy, this cost varies as no 2 sites are the same. Solutions based pricing requires greater development of policy and fees. | 10/30/2013 9:43 AM |
| 9 | There is a greater good in protecting human health and the environment by offering design services. Increasing costs to home owners hurts the home building industry and the economy. | 10/30/2013 6:42 AM |
| 10 | This is an internal matter | 10/29/2013 10:34 PM |
| 11 | Aren't these the same? Let's get rid of the "Bare Application" line item in the budget! | 10/29/2013 9:45 AM |
| 12 | I think our fees should be greater, but what matters is what the Governor and the legislature thinks. | 10/28/2013 5:34 PM |
| 13 | Arbitrarily setting a cap on fee increases could lead to unintended consequences for funding VDH programs. | 10/28/2013 5:07 PM |

SHIFT Gradients of Agreement

Q16 Online System: To enhance the state’s record keeping and tracking capacity, VDH should develop an online application system as soon as possible, which may include the ability for the private sector to bid on work. (This might require the ability to accept electronic seals, hence legislative action.) This online system would have two primary functions:

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|---|---|--|---|-------|----------------|
| a.Consumer Service Strategy: Make applications available online and allow/encourage the private sector to contact applicants and offer their services, as well as encourage applicants to contact the private sector (per Educational/Disclosure Strategy above). After some period (e.g., 3 to 5 days), if the owner does not update the application to indicate that a private sector practitioner has been retained, the local Health Department would process the application as a bare application (i.e., VDH would be the "provider of last resort"). | 22.73% 5 | 31.82% 7 | 45.45% 10 | 22 | 2.23 |
| b.Free Market Strategy for Backlog: The site would show when a backlog exists, which would provide business leads to the private sector who may be able to provide services more quickly than the local Health Department. The Code should be amended to eliminate the mandate that the agency pay for the private sector providers in the event of a backlog. | 22.73% 5 | 31.82% 7 | 45.45% 10 | 22 | 2.23 |

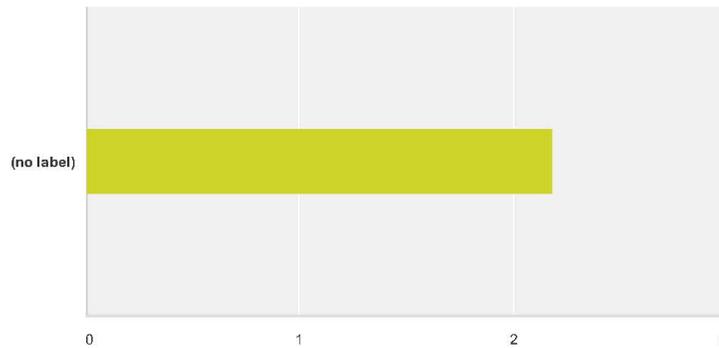
SHIFT Gradients of Agreement

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|--|---------------------|
| 1 | Recent experience with on-line applications with the government have not worked either at the state or federal level. Competition thing again. | 10/30/2013 1:46 PM |
| 2 | This is a bad idea. The consumer can be given a list or regulators to contact and obtain 2-3 estimates. If they exceed real VDH fees by more than a factor of say 3X then VDH will be the provider of last resort. Must educate the public that privatization will be coming in the near future. Tough issue. | 10/30/2013 11:29 AM |
| 3 | Believe that private sector options should be disclosed to consumers. But do not believe we should encourage/allow the private sector to contact the applicants. Increasing private sector involvement should not include the state setting up a website that provides direct business leads for the private sector. Consumers should be made aware of private providers. Not Private providers made aware of consumers. The mandate on paying for private providers in a backlog should be eliminated. | 10/30/2013 11:26 AM |
| 4 | This concept is good, but the current track record with VENIS and VITA is poor. When citizens apply for a service from the government they are not expecting their information to be put out to private companies for bid. There are some localities that have excellent tracking and reporting systems and requiring those localities to use a less functional state IT system would be problematic. | 10/30/2013 11:26 AM |
| 5 | The web site MUST also include statements up front that the owner does not have to use a private OSE and can use VDH as an option before the owner feels he is mandated to contact a private OSE. That would be transparency. | 10/30/2013 10:56 AM |
| 6 | May be able to support some version of both of these. Do not want the provider of last resort language. Ok with health department exploring online system that encourages use of the private sector, but need an opt out for citizens that don't want contacted by the private sector. | 10/30/2013 10:43 AM |
| 7 | An online auction for design services has no basis in Code or precedent, this must be an misunderstanding. The VDH's 10 essential services do not include market making. This proposal resembles the business strategy of "ambulance chasers," not professionals engaged in site interpretation and engineering. Solutions based services are not commodity priced, and government procurement for professional services are based upon quality based selection (QBS). | 10/30/2013 9:45 AM |
| 8 | There is nothing you can do to bring me to a 2 or 3. This is kind of useless and VDH will most likely not report true data anyhow. Strike "which may include the ability for the private sector to bid on work." I think IEN missed the call on this one. | 10/30/2013 7:37 AM |
| 9 | It should not be VDH's responsibility to farm out design work to the private sector. There seems to be a conflict between free-market capitalism serving design needs and a regulatory agency - they serve different roles and VDH should not be in the business of finding a designer for an applicant. | 10/30/2013 6:26 AM |
| 10 | This is not a service - it will lead to unsolicited emails, calls, visits - privacy should be respected | 10/29/2013 10:14 PM |
| 11 | Not really what I was thinking would be the "Primary" functions of an Online system. | 10/29/2013 10:13 PM |
| 12 | Online systems are fallible. Look at "Healthspace" which is cumbersome and what is happening with ACA. | 10/29/2013 1:33 PM |
| 13 | I don't have a problem with electronic applications, but again, I don't believe the Commonwealth needs to the marketing department for a private business enterprise. | 10/29/2013 10:00 AM |
| 14 | VDH can't run their Maintenance Web Site why should there be any anticipation that they could run this web site? | 10/29/2013 9:45 AM |
| 15 | 16.a. I don't know of any other area of the building industry that has a program such as this. If a list of private participants is provided to the owner, it is the owner's responsibility to contact them for bids for the work. Then the owner may apply to VDH if unable to find someone willing to take on the job. This should be spelled out in the education package given to the owner. 16.b. I agree with the second sentence of this item. VDH should not be paying for designers to do their work. That responsibility falls to the owner. | 10/28/2013 7:29 PM |
| 16 | I would love to have an online application system. We need to figure out how to pay for its development and implementation. Funding is the block. | 10/28/2013 5:14 PM |

SHIFT Gradients of Agreement

Q17 Required Strategy for Backlogs: If the free market/private sector online access to the backlog information is not allowed, the Health Department would be required to hire from the private sector to reduce a backlog, to be compliant with GMP 51, 54 & 61.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 27.27% 6 | 27.27% 6 | 45.45% 10 | 22 | 2.18 |

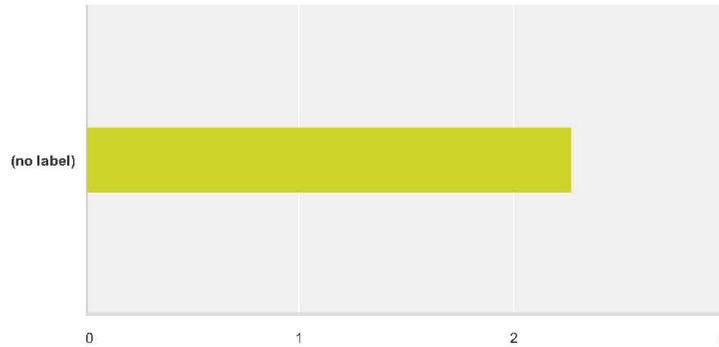
| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|---|--|---------------------|
| 1 | might work well | 10/30/2013 1:46 PM |
| 2 | No longer any need for backlog issues. Get rid of GMP 51, 54, 61. | 10/30/2013 11:29 AM |
| 3 | Applicant should be made aware of private options when backlogs exist. VDH should not be required to hire the private sector. | 10/30/2013 11:26 AM |
| 4 | Not sure local departments have the revenue to implement this requirement. | 10/30/2013 11:26 AM |
| 5 | This has been an unfunded mandate that needs to be addressed by the legislature. If VDH's budget is level funded and no moneys are itemized for private OSE work then this mandate may create additional health risks by depleting funds from other local programs to pay a private OSE. If local health departments don't have the funds to pay private OSEs then the profitability for private sector professionals may be limited. | 10/30/2013 10:56 AM |
| 6 | We support the free market solution above over this mandate. | 10/30/2013 10:50 AM |
| 7 | This is in accordance with law "Backlog" is deemed to exist when the processing time for more than 10% of a local or district health department's complete bare applications for construction permits exceeds a predetermined number of working days (i.e., a 15-day backlog exists when the processing time for more than 10% of permit applications exceeds 15 working days). When calculating backlogs, only applications for construction permits shall be counted." See QBS regarding procurement of professional services. | 10/30/2013 9:45 AM |

| | | |
|----|--|---------------------|
| 8 | This is confusing. VDH has been required by the CODE OF VIRGINIA to perform backlog calculations for nearly 20 years. To date, no backlog calculations have been provided because they did not collect them. Removing the mandate to hire private sector will decrease private sector participation and increase VDH competition—kind of defeats our purpose. The mandate to hire private sector was a deterrent for inefficient districts who should have quit accepting applications years ago. IEN appears to be looking at removing all checks and balances to improve transparency and help small business. | 10/30/2013 7:37 AM |
| 9 | Same comment as No. 16 - its the applicant's responsibility to find a designer in the privatized model, not VDH. | 10/30/2013 6:26 AM |
| 10 | need to think on more | 10/29/2013 1:33 PM |
| 11 | I think we need to let market pressures determine how this will fall out. How is the General Assembly going to fund increases to the VDH budget so they can hire private contractors? VDH's budget is already being cut. | 10/29/2013 10:00 AM |
| 12 | Backlog is too complicated and too manipulated to be a valued metric. | 10/29/2013 9:45 AM |
| 13 | I expect VDH to move permits and applications more quickly when we are out of the design business. | 10/28/2013 5:14 PM |
| 14 | The ability of VDH to pay for the services is a problem. It potentially has a bigger impact on localities which are more rural and possibly more poorly funded, where fewer private sector evaluators/designers are available to prevent the backlog. | 10/28/2013 4:51 PM |

SHIFT Gradients of Agreement

Q14 Exemptions Quota: Repair applications should count toward a locality's quota of (X) permits a month under the "exemption options" above. ["X" refers to a number identified in Q9; the amount is yet to be determined]

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 22.73% 5 | 27.27% 6 | 50% 11 | 22 | 2.27 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|---|---------------------|
| 1 | Private Sector can not it both ways. | 10/30/2013 1:43 PM |
| 2 | do not support | 10/30/2013 11:58 AM |
| 3 | Replace "quota" with "goal". Also, tracking may be difficult given the current data system. | 10/30/2013 11:22 AM |
| 4 | Repairs should be excluded from this calculation | 10/30/2013 10:47 AM |
| 5 | For counting quotas to meet action levels for private sector, only new construction permit applications should be considered. Since private OSE have said they are not interested in repair work, the repair applications should not be included in the application count for quotas. | 10/30/2013 10:43 AM |
| 6 | Need development of policy | 10/30/2013 7:41 AM |
| 7 | "X" should be for new construction only. | 10/30/2013 6:21 AM |
| 8 | No | 10/29/2013 10:12 PM |
| 9 | I need clarification. | 10/29/2013 10:06 PM |
| 10 | don't like "quotas" | 10/29/2013 1:30 PM |
| 11 | Quotas are unenforceable. | 10/29/2013 9:45 AM |
| 12 | If this means VDH will not do repair design after X applications are reached, I disagree strongly. There should be no mandated restrictions on VDH when it comes to designing repair work that alleviates a present public health threat. | 10/28/2013 7:19 PM |
| 13 | I'm not sure that I understand this. | 10/28/2013 5:09 PM |
| 14 | Can we count on private sector submitting a workable proposal within a given deadline? VDH has a ministerial duty to ensure that failing drainfields are corrected as quickly as possible. | 10/28/2013 4:46 PM |

SHIFT Gradients of Agreement

Q23 Oversight: When VDH OSEs don't meet the new established expectations, VDH should still be expected to enforce civil penalties, as it does for private OSEs.

Answered: 22 Skipped: 2



| | 3: Fully support; able to live with it; will not actively work against it outside the process | 2: May have some questions/concerns but still able to live with this decision; will not actively work against it outside the process | 1: Too many questions/concerns; not able to live with or support this proposal/package; the group needs more discussion | Total | Average Rating |
|------------|---|--|---|-------|----------------|
| (no label) | 27.27% 6 | 22.73% 5 | 50% 11 | 22 | 2.23 |

| # | If you chose "2" or "1," please explain what change would allow you to support the proposal or what questions you still need answered. | Date |
|----|---|---------------------|
| 1 | Silly recommendation | 10/30/2013 1:55 PM |
| 2 | Government agencies have internal personnel policies that allow for discipline in cases of employees violating required standards. Imposing fines on employees in addition to other disciplinary measures does not make sense. Private sector is not employed by government, so there is no employee-employer relationship. Not sure how this would help private sector. | 10/30/2013 11:33 AM |
| 3 | Too vague. I don't understand what VDH does to enforce civil penalties to private OSEs. Thought that was DPOR's responsibility. The civil penalties legislation has just now been authorized and is not even implemented by VDH to my understanding. | 10/30/2013 11:06 AM |
| 4 | do not support | 10/30/2013 10:56 AM |
| 5 | Employer/employee policy outside our interests | 10/30/2013 9:46 AM |
| 6 | This is ambiguously vague. Hence, VDH CONFLICT OF INTEREST. HOW does the same VDH staff design--permit--inspect--issue operations permit-- and enforce civil penalties without being in a conflict of interest? VDH has to choose if it wants to be regulator or service provider. Should they want the latter, then move the enforcement and administration of the onsite program to another agency. | 10/30/2013 7:37 AM |
| 7 | Who within VDH would be penalized, the OSE or the OSE's supervisor that instructed them to do other work instead of the Level 2 review? Employees are not necessarily in control of their time spent at work. | 10/30/2013 6:30 AM |
| 8 | no | 10/29/2013 10:27 PM |
| 9 | What are civil penalties in this case? | 10/29/2013 10:03 AM |
| 10 | I have no idea what this means. Civil penalties are against the permit holder - (ie. the home owner). Does this mean that VDH would only pursue civil penalties against permit holders where the design/permit was provided by the private sector? What about a VDH soil evaluation and a private sector design? What about a private sector soil evaluation and a VDH design? | 10/29/2013 9:45 AM |
| 11 | Sticky... I believe government employees are usually exempt from this kind of action. | 10/28/2013 7:39 PM |
| 12 | VDH has its own internal processes for its employees. VDH employees are not private providers. | 10/28/2013 5:23 PM |
| 13 | VDH should fine an employee for a work function? Does VDH anticipate fining private sector OSEs for poor work? This would seem to be a DPOR WWOOSP Board function, not a VDH function. | 10/28/2013 4:57 PM |

APPENDIX E: BACKGROUND DOCUMENTS AND DATA REQUESTS

BACKGROUND DOCUMENTS

The following documents were provided by the VDH as background documents and can be found on the VDH website at <http://www.vdh.virginia.gov/EnvironmentalHealth/ONSITE/Shift> or with an online search.

- A. VDH Re-engineering Initiative: Prepared by E. L. Hamm and Associates, Inc., May 2006
- B. Report Document 32 on HB 2185 (2011 General Assembly), enhancing private sector input: Prepared by VDH DOSWSEEMP, December 2011
- C. Report to Governor and General Assembly (Five Year Report): Prepared by VDH DOSWSEEMP, November 2011
- D. Report to Governor and General Assembly (Five Year Report): Prepared by VDH DOSWSEEMP, January 2007
- E. Senate Bill 415 (1994 General Assembly)
- F. Senate Bill 963 (1999 General Assembly)
- G. House Bill 2337 (1999 General Assembly)
- H. House Bill 2185 (2011 General Assembly)

DATA REQUESTS

Stakeholder members of the committee made the following information requests to the VDH. Below each numbered data request is the file or location of the information provided in response and where it can be found.

All data requests listed below as being available on the VDH website can be accessed at <http://www.vdh.virginia.gov/EnvironmentalHealth/ONSITE/Shift>.

Meeting 1 (July 18th)

Data requests that were satisfied by the VDH include:

1. QA/QC data for entire state
 - All QA Reports (folder) – VDH website
 - QA/QC Reports (folder) – VDH website
2. Cooperative agreements from localities, information from the Loudoun and Fauquier Health Departments to hear about the impacts of their systems and some of the problems they've had with their septic programs, information about the Loudoun County expansion and onsite septic process/program
 - Fairfax Agreement.pdf – VDH website
 - Loudoun Agreement.pdf – VDH website
 - LGA_Amendement_Template.doc – VDH website
 - LGA_Attachment-Services8-2011.doc – VDH website

- LGA_Template_8-2011.doc – VDH website
3. Information about what is being done by the VDH and about what is being done by the private sector (comparison between the two) and number of OSEs employed by the VDH
 - List of all OSE Licensees_2011.xlsx – VDH website
 - List of PEs in VENIS_2011.xlsx – VDH website
 - Private Sector OSE_July_2011.xlsx – VDH website
 - VDH Employee License List_2011.xlsx – VDH website
 4. Data behind VDH permit applications percentages.
 - OSE_PE Applications by locality and year.xlsx – VDH website
 - OSE_PE Applications_Statewide by year.xlsx – VDH website
 5. Budget information, especially records about what is being done by the private sector in different parts of the state
 - Revenues and Refunds by County.xlsx – VDH website
 6. Information about what the charges are for various different services, and a comparison of those charges when offered by the private sector vs. the VDH
 - VDH presentation to VOWRA – VDH website
 7. Overview about what the onsite program is in Virginia and report about the historic development of the program
 - VDH presentation – Meeting 1 summary
 8. List of stakeholder's concerns
 - Appendix 2: Preliminary Scan of Stakeholder Concerns and Issues
 9. Data for repair permit trends
 - OSE_PE Applications_Statewide by year.xlsx – VDH website

Data requests not addressed:

10. Information about other states that have gone through such a transition or that are operating under the system that the SHIFT is trying to establish. What did they do? How is it working?
11. A copy of the existing rights and legislation pertinent to the onsite septic program and the SHIFT initiative
12. Answers to questions sent to the Office of the Attorney General
13. Data about how the VDH onsite septic program is succeeding/failing
14. Information about how the 2011 HB2185 was formed – in particular how data were collected
15. Input from the Attorney General
16. Information pertaining to the RG32 report generated by the VDH
17. All res doc #32 data
18. Percentage of VDH revenue earned from permits
19. Predicted impact (economic and staff) of SHIFT on VDH
20. Data on geographic impacts
21. Drivers for uses of VDH v. private onsite septic work
22. Pressures for and against requiring level 1 and/or 2 reviews

23. Records about the onsite program from the VDH
24. 2012 VDH permit data

Meeting 2 (August 8th)

Data requests not addressed:

25. Records of the alternative systems by county for the past 2-3 years (number of systems, the number of inspections, and the number visits statewide)

Meeting 3 (August 29th)

Data requests that were satisfied by the VDH include:

26. Provide GMP141A on well permits – Accessible on VDH website
27. Data about the percentage of applications completed by the calculated due date for OSE/PE applications and non-OSE/PE applications for each district with the exceptions of Loudoun County and Fairfax
 - 0907a_Sewage-Sewage Applications Completed by Calculated Due Date.xlsx – VDH website

Data requests not addressed:

28. Information regarding whether or not the VDH should transition out of working on wells
29. Data on VDH processing time of onsite septic applications and backlog data
30. Information about how the VDH can remain "revenue-neutral" through the transition
31. Information about the economic impacts of the different proposals on the table, including the idea of raising VDH fees to have parity with the private sector
32. Information about the different mechanisms for incentivizing expansion of the private sector in areas where there is currently low service
33. Information about the economic impact of the shift on housing/building

Meeting 4 (September 26th)

Data requests that were satisfied by the VDH include:

34. Pennsylvania's language related to disclosure
 - 025 Pa. Code § 72.41. Powers and duties of sewage enforcement officers.pdf – VDH website
35. Information about SERCAP's relief fund, including a model
 - SERCAP info.pdf – VDH website
36. Information on the pertinent professional code of conduct and ethics/information about 12 VAC 5-6.15
 - 12VAC5-615-410 to 470.htm – VDH website
37. Map of where the private sector groups are located in Virginia and where they already provide service to identify if there are low service areas, and where
 - PEs_AOSEs_Applications2011.jpg – VDH website

Additional data provided by VDH as background information

- 11 14 12 Memo and Info to Housing Commission pdf.pdf – VDH website
- 2012 AOSS_Installations.xlsx – VDH website
- Alternative Sewage System Count.xls – VDH website
- Indemnification Fund Information.xlsx – VDH website
- Reports from 2010 to July 2013.xlsx – VDH website
- VDH Onsite Innovative Change in Essential Services (VOICES) summary of internal VDH meetings – VDH website

APPENDIX F: PUBLIC COMMENTS

Mark B. Taylor
County Attorney

COUNTY OF ACCOMACK
OFFICE OF THE COUNTY ATTORNEY
23296 COURTHOUSE AVENUE, SUITE 103
POST OFFICE BOX 709
ACCOMACK, VIRGINIA 23301
(757) 787-5799
(757) 824-5444
(757) 787-2468 FAX

July 18, 2013

Mr. Jon Richardson, R.E.H.S.
Environmental Health Manager, Senior
Eastern Shore Health District
Accomack County Health Department
P. O. Box 177
Accomac, VA 23301-0177

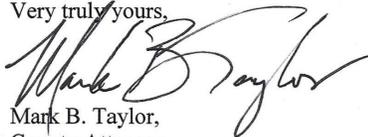
Dear Mr. Richardson:

Thank you very much for your letter of July 12 to David Fluhart regarding the Virginia Department of Health's new efforts to consider AOSEs through the Safety and Health In Facilitating a Transition (SHIFT) Stakeholder Advisory Committee. Mr. Fluhart made County Administrator Steve Miner and me aware of your letter and it was presented to the Board of Supervisors at their meeting on July 17. The Board opposes the privatization of on-site sewage programs as they have in the past and directed that this letter be sent to you.

The Accomack County Board of Supervisors values and appreciates the role that the Virginia Department of Health has historically played in relation to on-site sewage. The Board strongly favors no change in on-site sewage programs and feels that privatization should be avoided.

The Board of Supervisors also notes your advice that meetings of the SHIFT Committee may be the only chance for public participation in this radical change. The Board directed specifically that the request be made for a SHIFT Committee meeting to be held on the Eastern Shore. With our treasured and unique environment and our remote location, the Eastern Shore deserves the opportunity to host one of these meetings in order to both hear the SHIFT Committee directly and to have our concerns heard.

Very truly yours,


Mark B. Taylor,
County Attorney

MBT/sub

cc Accomack County Board of Supervisors
Mr. Steven B. Miner, County Administrator

Received August 15, 2013

Attached is a file dealing with suggestions for improving the onsite sewage disposal and private water supply program at VDH. These suggestions I believe tie into the SHIFT study IEN is doing. The suggestions have already been shared with Mr. Allen Knapp, VDH OEHS Director. The file (suggestions) refers to some attachments. I have not included those attachments, since they are not necessary for the basic understanding of the suggestions.

Brent McCord
EH, Mgr.
Rappahannock Area Health District

Revised approach for implementation of the OSE onsite program by VDH

Objectives: Reorganize the processing of well and onsite sewage disposal applications for individual lots and subdivisions in order to achieve a more effective and efficient quality control program for onsite submissions from the private sector. Thereby leading to a more reliable onsite program for the public.

Reasons: Current procedures for implementing the OSE program with the 2000 SH&DR, GMP's and AOSS regulations can be improved. Health Districts with onsite programs should understand they can reduce their costs in personnel time by applying the concepts and procedures provided here and in the attachments, and at the same time gain more assurances on the quality of the private submissions received. The ability for Health Districts to retain or acquire an EHS with the KSA's to properly field assess complex OSE/PE proposals and failing SDS analysis is a real and significant problem. A great amount of time and money is repeatedly expended on training new EHS due to a high turnover rate of employees in the onsite program. Approaching the onsite program at a district level compared to a county level will allow for a more effective and efficient quality control program of the onsite industry in each Health District and therefore the State. The retainment of a few highly skilled onsite EHS per district working efficiently by following the guidelines set out here and in the attachment will lead to a much improved, effective and efficient onsite program in each District.

Methods and Procedures:

1. Managers should recognize the percentages their district relies on OSE and bare applications and adjust accordingly with the impetus to have all submissions by the private sector. According to Dwayne Roadcap's survey analysis, more rural areas rely less on OSE and more urban areas rely more on OSE submissions. This trend for a greater percentage of submissions to be from OSE has a pattern to be less in the western areas of the state and increases as you move eastward. Also, more densely populated areas in the state, such as areas surrounding major cities, rely more on OSE submissions. This reliance generally decreases radially outward from these areas of more densely populated centers/urbanization.
2. Implement the "SDS Failure Analysis" procedure attached, or similar procedure. Failure analysis of OSE/PE designed systems should count as a quality control assessment for the particular OSE/PE.
3. Each district with multiple counties will need to maintain 2 EHS capable of implementing the Failure analysis procedures outlined in the attached file. Large or very busy districts such as Three Rivers Health District may need 3.
4. Any EHS that has demonstrated the capability to implement the SDS failure analysis procedures should be classified as a level 4C employee. This ability should be demonstrated by the onsite EHS 4C candidate producing three Failure analysis reports that are peer reviewed and determined suitable. Level 4B EHS in food program cross trained in the onsite program should be capable of processing an onsite OSE application at a level I review level. They should also be able to issue a well only permit. Competency in the onsite program to achieve an ability to perform level II reviews takes many years of field experience when competent supervisory oversight is available and diligently performed by the supervisor or 4C EHS. This level of KSAs should not be necessary to process level I reviews and permit issuance of OSE submissions. The EHS onsite 4B position should be eliminated overtime and replaced with a smaller number of onsite 4C positions providing an ability for over site of the onsite program.
5. VENIS sewage system design data entry for onsite construction permit applications should be altered to require very essential information only. It needs to be greatly simplified. Ex. rate, installation depth, treatment level, dispersal method, type absorptive area, bedroom number and g.p.d. Acceptance of CAD submissions is another improvement necessary.

6. Submission requirements for OSE/ PE submissions should be more in line with code of Va 32.1-163.6 submission standards. Basically 4 required pages in addition to the application and cover page. The required pages will be the system design parameters, construction specifications and notes, modified soil and site characterization report, and construction drawing. Standardize forms with no changes or alterations to the form layout by individual private OSE. GMP# 126 B would need to be revised.
7. Move toward the online submission of OSE/PE designs into the VDH VENIS database by the private sector.
8. In order to have permit submissions issued quickly with an overall better quality, require all submissions from the private sector to be submitted by an engineer (P.E.). The typical engineer submission is more professional than the typical OSE submission. An alternative to the P.E. requirement would be to designate a DPOR classification for licensed designers of onsite systems. If properly implemented this could work, but I believe the engineer lobby would not allow this to happen. Perform level II evaluations of minimally 5% of applications submitted for **construction permits** for each P.E. operating in the district. Level II reviews should include Ksat data unless the EHS 4C agrees with the permeability rate assessment.
9. AS BUILTS with each completion statement should be more uniformly enforced with back up from the central office. As you are aware, AS BUILTS should be drawn to the same standards as construction drawings, but AS BUILTS that are not to scale have been routinely accepted and will continue to be accepted provided they convey the necessary information. We do expect the AS BUILT to show an accurate house footprint configuration when house corners are used as reference points. The house should be positioned approximately as constructed on the lot relative to the well, if there is a private water supply, and all sewage disposal system components and nearby property lines. The minimum items depicted on an AS BUILT should reflect a drawing that achieves the desired result of allowing a person viewing the drawing an ability to understand and convey to others the location of the well and septic components relative to the house and property lines or fixed permanent reference points. It is not necessary to show the entire property boundaries. The items on the AS BUILT do not need to be to scale, but should be sharp, clear and distinct which allows them to be scanned or reproduced legibly. Generally, this requires the use of a straight edge or drawing template to help draw items and the components of the sewage disposal system, or a CAD drawing. Measurements that triangulate the location of the well and sewage disposal system components including the drainfield lateral boundary and reserve area(s) shall be shown. AS BUILTS should be on 8.5" X 11 paper, or a CAD drawing. AS BUILTS should contain all information about the onsite sewage disposal system, such as system type, treatment units and sizes, materials used for all

components, model number and name of all proprietary products installed, static, dynamic, and total head and pump models, etc. AS BUILT information can then be used to query the VENIS database for information and trends for SDS installations in Virginia. This will increase the reliability of information in the VENIS database, since it is at the very end of the permitting process and should be given importance for quality control measures by supervisors and managers.

10. Require all repair submissions to have a malfunction assessment abstract (statement) on a standard form, which is contained in the attached SDS Failure Analysis file. Malfunction assessment is a statement or abstract identifying the cause(s) for the malfunction, or component replacement necessity. This statement will help to address “band aid” type repairs. A discussion of the procedures for a SDS failure analysis (malfunction assessment) is attached as a separate file and is the heart of this revised, effective and efficient quality control program and permit processing for the onsite sewage disposal program. The Failure analysis procedure is for EHS to follow when investigating malfunctioning SDS, not a requirement for the private sector.
11. All submissions for subdivision review should: 1.) **Only required to receive a level I review of the information on the subdivision plat.** 2.) Plats signed by OSE with the statement – **“All lots contain areas for onsite sewage disposal for systems with a general approval under the current VDH onsite sewage disposal regulations and are not reliant upon Code of Virginia 32.1-163.6 type designs”.** 3.) Any areas that necessitate pressure distribution or require a professional engineer for their design, the plat should be sealed by a P.E. licensed in Virginia with the same statement. Only very minimal information should be required to be entered into VENIS for proposed subdivisions. Ex. total lot quantity referencing the approved subdivision plat. VDH should institute a \$300 fee and \$20 per lot fee for a subdivision level I review. This will help to offset recent reductions in general funds provided to VDH by the legislature and let the developer pay for some of the VDH time used for subdivision review.
12. Establish a fee for a bare or OSE application for a component replacement for systems that technically are not malfunctioning, but require a replacement of one or more components where soil work for a new or additional soil absorption area is not performed or necessary. These type applications could be bare applications and generally are such. Suggest \$85 application fee. At current application numbers, projection would be for generation of \$2000 - \$2,250 per county per year during this bad economy. If this cannot be accomplished on the State level, advise counties to implement this fee. Hopefully some of this county money would trickle back to the local VHD department through the cooperative budget.

13. There should continue to be a VDH application fee to property owners submitting private sector designs for onsite sewage disposal systems. These fees will allow the users of onsite sewage disposal systems to pay an appropriate amount for VDH oversight, while not obtaining all VDH funds for the onsite sewage disposal and private water well programs from the State general funds.
14. Advise county administrators and leaders that these procedures are effective, cost efficient and provide assurances that homeowners are receiving quality onsite sewage disposal systems. When designs are not safe, adequate, and proper, homeowners will be provided sound scientific information in order to possibility pursue reimbursement for damages, and properly understand repair design options. This will be accomplished by applying the Failure Analysis procedures to malfunctioning systems. Some of these systems we will be informed of by the AOSS maintenance reporting. Counties could require a bond of an appropriate amount for OSE or PE operating in their County. Consider a longer time period where OSE are responsible for their work that may be discovered years later as negligent. Suggest 5 years. A lot of designs that do not meet code and/or are not adequate can function without surfacing under low usage (gallons per day), but if they are used at average design levels the systems will not function properly and will surface, or if installed in permeable soil in the groundwater without going through a minimal depth of aerated soil can degade the groundwater.
15. Betterment loans for sewage disposal system installations have been allowed by the Code of VA. These have not gotten off the ground due to the economy and future uncertainty. Onsite sewage disposal betterment loans are essential for the onsite program.
16. Evaluate how effective the Department of Professional and Occupational Regulation (DPOR) licensing of Onsite Soil evaluators and health Department policies are in helping to assure reliable private Onsite Sewage Professionals are available, and poor performers are identified. Currently poor performance does not lead to consequences that would encourage the poor performer to change behaviors. The private sector will not police itself, but properly revised and implemented VDH policies can create and manage a change for more private sector involvement to reform bad actors.

Summary:

When these 16 components are implemented, they will allow the VDH onsite program to operate with greater efficiency and more effectively by directing accountability to the private sector for improper designs, which has generally not occurred. The EHS will no longer have to spend enormous time repeatedly attempting to elicit good paper work designs from an OSE that may only look good on paper, but can apply their time implementing procedures that will deliver a reliable, effective and efficient onsite and private water supply program. The concepts and implementation of the SDS Failure Analysis procedure are central in making the onsite program effective and more efficient. **The SDS Failure analysis procedure is dependent on a Health District's ownership of (3) permeameters to obtain Ksat data**, and two 4C EHS positions in the onsite program per District. Without an ability to obtain ksat data and administer the SDS Failure Analysis procedure, the quality control of the onsite program cannot be effective or efficient. Changes to the VDH VENIS database and OSE submission standards are equally important and necessary. These changes when implemented will allow cost reductions in the VDH implementation and quality assurance of onsite sewage disposal mainly by operational efficiency, which will be due to 2 – 4C onsite EHS per district and the elimination of EHS 4B in the onsite program only. EHS 4B standardized in the food program and cross trained in the onsite program should be expected to perform level I onsite reviews and permit issuance of private P.E. or OSE submissions. If the particular Health district processes bare applications, the EHS 4B will be expected to issue component replacement permits, perform inspections of these simple and basic type of permitted SDS work, and issue well only permit applications. These actions and responsibilities will be supported by the EHS Supervisor and two onsite EHS 4C personnel in each District. If the District is required to do bare application submissions for undeveloped land, the onsite EHS 4C will do these for the district as the workload and situation in the particular Health District allows. The public should be directed toward the private sector for onsite services. The managers and supervisors should develop their skills in processing different application scenarios with the intention of upgrading the accuracy and accountability of private submissions. This can be accomplished by a few but accurate level II reviews and directing accountability to the appropriate individuals for systems that fail. The importance and correct use of Ksat test procedures and data interpretation needs to be understood by the managers and supervisors. The attached SDS failure analysis procedure gives a good explanation and implementation of Ksat testing procedure. The Ksat procedures should be used for both level II reviews when necessary and SDS failure analysis situations. There are many good individuals and companies in the private sector performing good work in the onsite sewage disposal industry, but keep in mind the private sector will not police itself, and there are poor, unreliable private sector performers also.

Wednesday, August 28, 2013 2:10:53 PM Eastern Daylight Time

Subject: SHIFT process comments

Date: Monday, August 26, 2013 2:55:28 PM Eastern Daylight Time

From: Baker, Tim (VDH)

To: Wilder, Kelly (kw5um)

Hello,

I would like to submit comments on the process. They are as follow:

- 1) The topic of privatization of the onsite sewage process arises from the EL Hamm report. This report does include a lot of valuable information but one problem exists and that covers the conditions that existed when the EL Hamm report was completed, and more importantly, the conditions that lead up to the report. The economic conditions of speculation type development, substantiated criminal behavior by financial lending institutions actions, and over-inflated stocks all caused an overall economic condition to exist that does not exist now. In fact, these conditions evolving all at once may never occur again. This did cause septic application backlogs in many locations, but this also occurred when the number of private practitioners were far fewer. It is very questionable to be making new/future policies on conditions that existed many years ago, and may not be repeated. The future monetary policy is not based on conditions of 5 years ago yet that is what is occurring now with this process.
- 2) Conflict of interest has been a topic of discussion recently. With the current arrangement of the private sector being able to evaluate a site, issue a permit, require a certain component, install a system and perform the inspection all without any other agency involvement, I see no other way that a conflict of interest is raised to this level.
- 3) Backlogs: when private sector partners submit work to VDH, the clock to issue/reject begins when the application is submitted to VDH. The private sector has a major advantage in that the clock did not run at all for them as they worked through the various issues in order to arrive at a point of application submittal. For bare applications submitted to VDH the clock begins when the application is submitted. VDH does not have any length of time to perform a site evaluation that is "off the clock" that is always available to the private sector.
- 4) For VDH work, the Indemnification Fund exists for certain system failures within 3 years. What type of monetary assurance will exist for property owners if the work is entirely performed by the private sector?
- 5) If work is provided by the public sector there is an expectation and requirement to respond within certain time-frames to provide service (mainly inspections). This condition does not exist with the private sector.
- 6) VDH must be concerned about private persons, the property, human health, the environment and the community. How will this be required by private sector practitioners?
- 7) Will Virginia localities be required to accept plans, via work submitted (subdivision submittals), plans future utility needs based on private practitioner work?

Tim Baker

Tim Baker, EH Manager Sr., R.E.H.S., A.O.S.E.
West Piedmont Health District
540-484-0292, X109

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Received August 30, 2013

Public Comment – Anonymous

1. I am concerned that the idea of affordable septic may lose ground. When mission moves to money, that is not always a good thing. Paying a soil consultant is out of the reach for many people and organizations, such as churches. Will there be a clear path available to repair or replace septic systems for those who are at a financial disadvantage? As long as having direct access to septic contractors is still an option, that can ease the potential for burdensome out of pocket expenses. Will the County continue to provide services for those who qualify?

2. Those who do hire a soil consultant may find themselves at a disadvantage by an over enthusiastic approach. If soil consultants have a financial incentive to specify a certain system or product, he/she may over design to that product. How is the owner to know? If the system/product specified is a very expensive one, can the owner ask for an alternate or equal product to be recommended to save money and still do the job? Will the owner have to hire another soil consultant?

Maybe in this instance, buyer beware is the only approach, but that is a difficult position for the end user. Evaluating septic related products can be challenging. Learning about the products that change a gravity fed system to a pump driven system is difficult for the average Joe. These systems are not like vehicles that can be viewed, driven, value checked in a book or compared with other vehicles with relative ease. It can be daunting.

3. Though it is difficult to monitor, soil consultants should make full disclosure part of their professional standards. If they have a financial interest in specifying a product, it should be acknowledged up-front. It should be standard practice for the owner to receive two recommendations on a system/product. In the absence of that, the owner should be able to ask for more than one recommendation without incurring additional cost.

I understand that a competitive market for branded systems is nearly non-existent. Having a recommendation for a system A and a system B is very important to the user. Not everyone wants to finance it with a loan, sell their second car, or postpone surgery. I exaggerate, but the cost of the products can be burdensome.

3. As there should be a clearly defined path for affordable septic, there should also be a clearly defined path for the user to file complaints.

4. Since septic systems are a public health and environmental issue, there has to be a broader, consistent effort of getting information into the hands of homeowners, churches, schools, etc, where ever septic is or could be. There is much misinformation about septic system maintenance. I have asked six different people as to when to pump out a septic tank. Every person had a different answer. This leads to a lot of confusion and distrust.

In an effort to get information out to the homeowner, can real estate agents play a roll? Can those that sell a home or property where a septic field is present be required to attach information to the closing documents that 1. define a septic systems, 2. explain in simple language and with line drawings how the septic system works 3. how to take care of it, 4. list county services and support. 5, list county regulations concerning maintenance.

Can brochures can be available at county libraries?

A small ad (run gratis) could appear in every issue of the county newspapers. The ad would alert readers about support from the health dept., about regulations, the importance of maintenance, where to find information, etc. Different ads could be run over and over again, each with a different emphasis.

When a culture of caring about public health and the environment is established by the County, when a clear avenue for easy and inexpensive compliance is paved, you will see more good things happening. Some may say that is what now exists. Maybe so, but it isn't being promoted very well.

Thank you for your patience and consideration of my comments and questions. Many are out of context and

probably naive, but that is the point, most homeowners are naive. That is why it is so important to have a fair and unbiased structure in place that supports the users' experience in this process.

1. As a homeowner, a tax payer and as this is a public health and environmental issue, it will be important to know that VDH has strong oversight responsibilities concerning the design and installation of septic systems (repairs or new) by the private sector.

In that oversight role, the high regard and credibility of the VDH Engineer rests on their having the same level of education, experience and expertise as their peers in the private sector. If the VDH Engineer can communicate with authority and authenticity, VDH's commitment to reasonable yet high standards will be taken seriously.

2. If final responsibility for the Public Health and Environment as it relates to septic work rests with VDH, then it is very important that VDH have well qualified Engineers to protect the public interest and the interests of VDH.

3. I would like to urge VDH to make available to homeowners a Professional Code of Conduct for the process. If VDH will not provide such information, can VDH direct the homeowner to where it can be found?

4. I understand that it has been suggested that when selling a home with a septic system, an inspection of the system be conducted. How thorough of an inspection would it be? Would the process be implemented by a General Services contract with qualified Septic Contractors? Like a vehicle, if the homeowner can demonstrate that the system has been maintained on a regular basis, then an inspection of this sort may not be required.

5. Warranties: The length of a warranty on product and installation is usually one year. Why wouldn't the Engineer who designed the system, inspected and approved the installation, have liability for it during that time? Isn't it the responsibility of the seller and the specifier to inspect the equipment - make sure it is not damaged or faulty? Septic products often have to meet NSF standards and they have warranties that the seller of septic products should be able to access.

It is a process that can be cumbersome and could become an acrimonious affair. I do not see easy answers, but with the privatization of onsite septic work, the liability for equipment failure during the warranty period may need to be reevaluated.

Regardless of how it works out, I suspect that the homeowner will pay. Holding the homeowner's feet to the fire, however, during the warranty period for something that they did not manufacture, specify, inspect or install is not principled.

7. Cost: Qualifying for VDH assistance to lessen the financial burden on the homeowner should be easy and dignified.

It is also my hope that the free market will develop a competitive environment for quality affordable services.

Please do not forget the elderly. Some elderly may not be poor by standards set for Welfare, but they may not have the resources to pay for a septic system repair or a new installation. It would be onerous to expect an elderly couple/person with few assets and limited income to borrow money for such an endeavor. I hope that provisions will be made for such circumstances.

One more thought: Are Septic Contractors and their interests well represented? I hope that every effort is being made to encourage representation of this group. Septic Contractors are the people that have "their boots on the ground" so to speak. Their perspective is very important and will bring to light some issues that should be considered, or at least, documented as part of the formal record of the committee's work.

Comments from Brent McCord
EH, Mgr., Rappahannock Area Health District
9/3/13

Comments for the IEN in regards to the SHIFT process with the VDH Onsite Sewage and Water supply program.

VDH adopting a business model similar to the Building officials is not significantly different from what VDH does now, dependent upon the percentage of work completed by private sector OSEs for a particular Health district.

Building official business model:

1. Review plans and issue permits.
2. If plan is sealed by a PE then it is approved and permit issued.
3. Building official inspects construction. Fee based?
4. PE's are allowed to perform some types of inspections that are very timely due to weather constraints, etc.
5. PE's and Trade professional can certify certain types of work. Ex. Master Electrician certifies that the house is wired correctly.
6. Building official issues occupancy permit based on inspections and certifications for a particular project.

Areas of concern with this model in the VDH Onsite program:

Inspecting the installation of an onsite sewage disposal system is much different from building Official inspection of a house footing, concrete slab preparation, or house framing, etc. Putting too much reliance on an installation inspection by VDH personnel that have not had sufficient involvement in verification of the soil and site conditions leads to a false impression by the public of a satisfactory design installation.

The most critical component of an onsite sewage disposal system is the soil component. This component cannot be readily inspected unless you plan to perform an evaluation of the soil and the site. This takes times. Also, when there is a discrepancy with the soils compared to the reported soil and site characteristics the design is based upon, often times, the installation of the permitted design does not allow for a remedial design alteration in the same location or with the same type of system design. It is not like widening or increasing the depth a footing trench that is too small or shallow. Ex.) If absorption trenches are permitted for a 12" depth, but they are installed on top or too close to a restrictive or impervious soil layer, a repair design may be considerably different from the original design.

Onsite system installations and inspections are generally the last items to be completed on a development project, therefore, when regulatory noncompliance issues or design problems are discovered at the time of the installation inspection, solutions usually are not simple and take time, and time is what you are up against due to settlement schedules. Owner, buyers, builders and real estate professionals lose faith in the process when this happens. If the Health Dept. is going to perform an inspection of the installation, they should have already performed a level II site and soil evaluation of the system. Better to discover design, soil and site condition compliance, or errors at the beginning of the process. The VDH performing inspections of a large percentage or all sewage disposal system installations is an inefficient and ineffective use of VDH resources. You could also continue with

performing level II reviews on a percentage of the OSE/PE submissions, but how are you going to maintain the quantity of qualified VDH personnel to do it? Suggest each Health District should have at least two 4C onsite positions. Qualifying for a VDH 4C position should be based on peer review of an applicants work.

When sewage disposal systems fail, failures are usually related to some type of hydraulic overload, which most often can be related back to an erroneous soil and site evaluation. Inadequate (undersized) systems usually cause the sewage effluent to surface sometime in the future when the severity of the design inadequacy and the percentage of use, in terms of how much water (sewage) is applied to the system, are a significant difference. Systems that are in or too close to a watertable most times do not surface and are perceived as working satisfactorily unless a soil and site evaluation is completed to determine the hidden underground condition. This takes a complete soil and site evaluation.

Suggested amendments to the Building Official model if applied to VDH Onsite program:

1. Revise submissions standards for OSE/PE designs. OSE forms should be revised to clearly report the data necessary and used to design an adequate and safe onsite sewage disposal system. Have the form "state" the soil permeability rate at the infiltrative surfaces, and at 12" and 18" depths below the infiltrative surfaces. This information in this format will allow the PE to be better informed to understand the permeability characteristics of the site in order to propose a suitable design. It will also allow a VDH reviewer a quick and easy ability to discern if the design is adequate without spending significant time determining this information by deciphering a soil evaluation report that may or may not adequately provide the information. VDH personnel can direct their time more effectively addressing public health issues.
2. If VDH personnel are going to perform a quality assurance inspection for an onsite sewage disposal system, the soil and site conditions are the most critical components, and these components should be assessed at the beginning of the process. Review a small percentage of these designs. However, you need experienced individuals performing these type of field reviews. Where do you get them and how do you retain them? VDH needs minimally 4C EHS positions in the Onsite program.
3. Evaluate malfunctioning Onsite systems in order to understand the reasons for a failure and determination of the proper repair options available. Everyone benefits by understanding what caused a problem, so it is not repeated. The property owner benefits by receiving a proper repair. Have a simple one page form to report causes for the malfunctioning of an onsite sewage disposal system. Use this form to report the information into the VENIS database "malfunction report". Understanding trends from a compilation of these reports will identify design issues that lead to problems with improperly functioning onsite systems.

Overall concerns with VDH onsite program:

1. Retaining VDH expertise in the onsite program. Create 4C positions in onsite program.
2. Allowing the private sector to function more freely, but at the same time the private sector needs to address improper designs. There are a lot of good private sector OSEs and PEs. The private sector needs to help police the bad actors if the program is going to be reliable and accepted by the public.
3. How to identify poor performers before a significant volume of inferior work is performed. Do away the policy of no new application fee for a re-submittal with revisions to an initial private sector denial when submitted within 90 days of the denial.
4. How to assist property owners affected by improper designs. Institute a failure analysis procedure for malfunctioning sewage disposal systems. Betterment loans need to become a reality. If less than 5% of private sector designs malfunction, that may be considered an acceptable failure rate for the whole program, but it is not acceptable or tolerable to the individual owners of these systems. Betterment loans would help here. Institute a failure analysis investigation procedure for malfunctioning onsite systems that VDH personnel can implement statewide.
5. VDH onsite program can be more efficient and effective.
6. Average private sector OSEs and VDH EHS/OSEs need to be more experienced.

September 4, 2013

To: Institute for Environmental Negotiation – S.H.I.F.T. Taskforce

From: Gary Gilliam

Dear Ms. Wilder

The following are comments I would like to submit to the group advising VDH on how to maximize private sector participation in the onsite sewage program while providing adequate oversight to protect public health and the environment.

I have been employed as an Environmental Health Specialist in the department's onsite sewage program since January 1989 and have served in the role as EH Supervisor of three localities since 2004. I also participated as an Authorized Onsite Sewage Evaluator Field Examiner when VDH had responsibilities over the program.

In the sense of brevity, I will construct my comments in bullet form. As a further qualifier of perspective, I would add, I have attempted to stay current with the ongoing discussions and am constructing these comments after attending the August 29, 2013 SHIFT group meeting. Importantly, current funding to the department does not wholly support the department's ability to complete the mission; and the aide in services currently afforded by the private sector has become a fundamental component of the process.

I would like to also take the opportunity to voice my disappointment that Environmental Health field staff have been omitted from the committee.

Roles

- The expedient transition of site and soil evaluations to the private sector should be finalized as quickly and responsibly as possible. The full application of the privately provided services would be green lighted once the area or region of service has been examined or means tested to have a viable number of professionals to establish a competitive market base for the consumer.
- Currently the department processes or receives site and soil evaluations for sewage disposal systems under three principles of certification; subdivision, certified letter, or construction permit. The use of department resources to conduct site and soil evaluations for subdivision review and certified letters should be terminated as soon as possible.
- Construction permits for sewage disposal systems have two primary units of definition, **NEW** and **REPAIR**. These two units have critical subcomponents when it comes to real life application that will be specifically addressed below.
- If at this time, a consensus cannot be reached (or the ability proven) to wholly privatize site and soil evaluations for NEW construction permits. I would advise additional safeguards or boundaries be implemented in the construction permit application process to help the department prioritize which submissions are truly intended for the construction of a structure. The goal here is to eliminate VDH inadvertently undermining or limiting the ability to establish a private sector. This measure is anticipated to be temporary and will be relieved once a private-sector system of delivery establishes a competitive market base. In areas where an insufficient number of private-sector OSE's exist to support a market based system, it would be imperative that the consumers would be allowed a choice of service providers. It is also conceivable some service areas may take an extended period of time to qualify as a viable market base.
- Repair applications are currently provided at no cost and the great majority of repair applications are completed by department staff.
- The fee for repair applications should remain the same, no charge.

- VDH personnel should continue to process repair applications for residential structures which are the primary residence of the owner or their extended family. This role serves both the citizen whose taxes currently support the program, enhances the ability for the residential consumer to place their finances to the problem at hand, their failed septic system, and provides the department oversight in key program areas. This includes the design and installation of systems, manufacturer's products and components which uses are seen expanding rapidly in both conventional and alternative onsite systems.
- Currently within the Commonwealth repair applications for commercial properties are currently processed by both public and private sector designers (OSE/PE's)
- The processing of Repair applications for commercial properties should be limited to the private sector. Design considerations of wastewater flow and wastewater strength are important design considerations. Currently, in the district I work, a professional engineer is required to characterize the wastewater strength of all commercial applications.
- The requirement of private sector design for residential rental properties would be a significant change in the current system. The implementation of such a requirement may be both opposed or have difficulties in the ability to implement. This recommendation to privatize site and soil evaluation for residential properties rented out for profit, is a substantial change from the current practice and is a responsible approach to the stakeholders, more realistic and politically achievable.
- I noted earlier NEW and REPAIR applications have critical subcomponents. I have yet to date heard comments of discussion of how certain applications will be processed in the future. It is common for the department to issue permits that required no soil evaluation to support the design. Examples of new construction permit applications that do not need soil certification would be the voluntary movement of a septic tank due to home expansion or deck construction, the installation of a sewer line from detached garage or pool house, conditional permits (which are in effect condition's being applied to operation permits). Example of repair applications which do not require soil evaluation would include collapsed or crushed system components, which are frequent, and would seem counterproductive to privatization. What consumer is going to pay an OSE or PE for consultation that can be executed by a lesser qualification of tradesmen (i.e. onsite sewage system operator or installer)?
- Permits for new construction that are supported by existing records on file or do not require a soil evaluation, as in the case of the voluntary relocation of septic tank, should be administered by the department. These applications will involve a fee subsidized by the tax payer, but fall into the realm of improper definition of role to unrealistic market performance when the cost to do the consultation is greater than the cost of the work. Yet the work and modification should require documentation. Therefore, the department is the best service provider in these cases.
- Additional commentary to the statement in the above bullet "supported by existing record on file" is a critical point of discussion. In any case of new "voluntary" construction associated with an existing onsite system; if the existing record is found not to support the existing use or the proposed use exceeds the permitted capacity on record private sector consultation would be required. An exception would be in those cases where the owner submits an application accepting limitation or conditions to the existing system's operational permit.
- Another aspect of application, which is important to consider, are the application submittals which fall under the title; Safe, Adequate, and Proper Review, (aka S.A.P applications). Section 32.1-165 of the *Code of Virginia* states the following: "No county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building or upon finding that the issuance of said permit has been approved by the Review Board." *Under this law, the Health Department must render a new decision about a sewage system that is not failing when something is changed.* Currently, the implementation of this application is inconsistent across the Commonwealth and may be non-existent in such places where the building official currently does not request such a review. For the purpose of this submittal, I would strongly recommend those application requests for Safe, Adequate, and Proper Review that may be readily handled by a review of office records are processed by the department.

- In such cases, no record exists, and a qualification of what factually exists in the field, must be determined by a site and soil evaluation, in these cases, the owner should be required to submit the supporting qualification or certification for use by a certified system designer/evaluator which may include an OSE or OSE/PE.
- In terms of roles and responsibilities, I feel one outcome of the SHIFT recommendations should be directed to “right the ship” so to speak. I would reiterate the positives found in the professional practice of the building industry. The building official does not design houses he inspects houses. A system of proper checks and balances is critically important. Conflict of interest by service professionals should be minimized; otherwise we are *constructing a license to steal*. Currently, we have built a system that allows an individual to be the system designer, system installer, the system installation inspector, and operation and maintenance provider. A ridiculous model of practice that must be fixed.
- Enforcement of failed septic systems, regulation and policy are functions only the department has the authority to execute. Consider the current business model described in the above comment. How can the department enforce any aspect it has responsibility over if it does not see it.
- I would like to reiterate the decision on how to process those permit applications that do not require a soils evaluation is a critical advisement. The charge is to privatize to the greatest extent possible. The decision is an ethical and political football and has significant public health attributes. The ethical and political dilemma is to introduce a third party into a system of practice that currently is handled without complaint and would lead to new complaints of excessive cost. The counterpoint is if you take the department out of the equation, the private sector tradesmen (i.e. designer, operator, and installer) need to become mandate reporters of system failures.
- Another critical comment in regard to system inspections, that is different from the building code model. In the construction of a home it is more likely the corrective action taken will be equal to the intended plan. The building plan can in essence, be repaired to its equivalent intent. Whereas, a sewage disposal system may or may not be repairable to a level equal to the capacity of the original site.

Responsibility

- It may go without saying, but only licensed OSE & PE are permitted to certify soil evaluations and sewage system designs. In practice, it is currently clear that both private sector firms and the agency have individuals in training. The final certification in all instances must be signed off on by a licensed professional recognized under DPOR.
- As the ultimate responsible stakeholder, VDH should review 100% of the applications submitted prior to approval. The right of entry and inspection should remain as it is currently cited in code.
- The requirement of inspection and review throughout the process (permit issuance through construction) should be parallel and modeled to the current roles and application of inspection and quality assurance that currently exist in the building program and the role of the building official. Who would go to the City of Virginia Beach and suggest the building office only look at 5 to 10% of the structures constructed?
- Each applicant is paying a significant application fee. What service is the consumer getting when the department opts out of providing the basic site review assessment?
- Inconsistent behavior by the department is a hallmark complaint of the program as it currently exists. If the department is allowed to set goals to “spot check” the industry, inconsistency will be created from the beginning. Separate from the fact that some localities already choose to implement a 100% level two review policy, the existing inconsistent behavior of the districts toward level two reviews will expectantly remain inconsistent. Again, the new paradigm should involve a model of behavior equal to the building office.
- Much has been said about the final inspection. The final inspection does not constitute a level 2 review. Under a system where the department has already qualified the submission, conflicts associated with not being regulatory compliant should be rare. Just because the situation is stressful does not warrant an excuse to ignore the problem.

VDH's role up to the point of installation can be vitally helpful to the end product. Sewage systems in their physical aspect are a component of the property. A number of decision makers have opportunity to impart negative impacts on the system including: the owner, land clearer, site grader, builder and installer to name only some. It can be very difficult for the private sector system designer to present authority over the process at the time to impart the necessary change or correction necessary to make a system regulatory compliant (he may not get hired again). The department is best suited to serve that role and will only be able to do so when the process places the department as an integral participant. Failure to oversee the quality of the final product in the onsite sewage system industry places an unnecessary public health and financial risk not only to an individual consumer but the community at large.

- Fees – the cost of services should be consider not only for who provides the service as it is now with a modest reduction of fee allotted for when the submission is supported by private sector certification but what level of review was required. If the work necessary to support an application does not involve soil work as in the case of a conditional permit or voluntary upgrade of some system component prior to the dispersal area the required fee should be less. This is simply a matter of responsibility and common courtesy. Currently, an applicant can pay a \$425 dollar application fee to run a short length of sewer line to tie into an existing septic tank. The actual job's cost may be exceeded by the permit fee.
- Comments were submitted at the SHIFT meeting in the area of home inspection services; specifically those services pertaining to the review of water supplies and sewage disposal systems. Currently, there is no minimum knowledge requirement for this service provider. This perhaps is a political football (an extra expense), but, for those short changed by the practice, they remain burned without proper boards of review to file complaint too. In terms of public health this borders on the irresponsible. One thing that can be fairly said for conventional onsite sewage systems – they are guaranteed to fail in time. Yet they remain unqualified.
- I am not presenting a plan to provide inspection services for the thousand of conventional systems in the state. Simply pointing out a false sense of security is coming forth from this current service methodology.
- One comment regarding GPS location of onsite sewage system or components, they do nothing to verify the system is on someone's property. Location of systems, unless able to be tied to verified points on an existing plat, should remain in the arena of the surveying community.
- The department will remain the sole resource of the physical record (aka the files). No one else is suited to serve as the "circuit court clerk" of drainfield locations.
- The department has implemented an electronic database that to date serves as a weak conduit to issue permits at best. The department has a responsibility to track system and component failures, a responsibility to track level two denials and follow up on those instances where repeated denials exist in an area of significant potential public health impact and/or system operational capacity. Yet fails to do so, why? This is both a public health and consumer protection issue. The department chooses to say their role is not in protecting the individual consumer. How does one diverge the two?
- In light of substantial technological changes and introduction of numerous system components, the development of a system of private sector driven permits, versus the fact this is a multi-million dollar a year industry with long term risk of cost that could be exponentially higher. It is my opinion, that the failure to build a data base that tracks program operational effectiveness is the most significant shortfall in the programs administration.

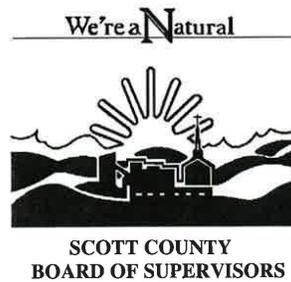
Please feel free to contact me for clarification.

Respectfully Submitted,

Gary Gilliam, EH Supervisor,
Gary.Gilliam@vdh.virginia.gov
Central Virginia Health District

BOARD OF SUPERVISORS

DARREL W. JETER
 D. JOE HORTON
 K. LANDON ODLE
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**COUNTY ADMINISTRATOR**

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SCOTT

VIRGINIA

At a meeting of the Scott County Board of Supervisors begun and held in the Supervisors' meeting room at the Scott County Administrative Offices in Gate City, Virginia on Wednesday the 4th day of September, 2013 at 8:30 a.m.

PRESENT: Darrel W. Jeter
 D. Joe Horton
 K. Landon Odle
 Joe W. Herron
 Danny P. Mann - Chairman
 Beryl E. Maness - Vice-Chairman

ABSENT: Chad E. Hood

On a motion by Darrel W. Jeter, duly seconded by Joe W. Herron, this Board hereby establishes its position that the Health Department should continue to oversee on-site sewage programs in Scott County, as it currently does, and further directs the County Administrator to send a letter to Mr. Erik Johnston, Virginia Association of Counties, expressing concerns about privatization of on-site sewage programs should they be implemented in Scott County. (Said letter being attached to the minutes of this meeting; Minute Book 28 Attachment No: 1)

Voting aye: Darrel W. Jeter, D. Joe Horton, K. Landon Odle, Joe W. Herron, Danny P. Mann, and Beryl E. Maness.

Voting nay: None

Attest: _____

Kathie Noe
 CLERK

C: Dr. Sue Cantrell – Health Department
 Brad Stallard – Health Department
 Erik Johnston - VACO ✓

BOARD OF SUPERVISORS

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September 6, 2013

Mr. Erik Johnston
Director of Government Affairs
Virginia Association of Counties
1207 E. Main Street, Suite 300
Richmond, VA 23219

Dear Mr. Johnston:

RE: Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Meetings Relative to Privatization of Direct Delivery Service of the Onsite Sewage Program Statewide

Recently I received notification from our local district office for Virginia Department of Health (VDH) informing me of efforts currently underway to examine the extent to which direct service delivery of the onsite sewage program may be privatized statewide. This raises particular concern for the citizens in Scott County.

These stakeholder discussions, as I understand it, are facilitated by the University of Virginia's Institute for Environmental Negotiation (IEN); and the stakeholder committee is made up of VDH representatives along with private sector onsite sewage practitioners, local government representatives, homeowners, and other interested parties. Since you are VACO's representative on this committee, I wanted to share some of our concerns with you in the hopes that you will be our voice since we do not have a representative on the committee. I understand there are citizen expression periods in the meetings; but with budgets and time being so tight due to cutbacks, it places a burden on us to travel to Charlottesville to express our opinion. I do greatly appreciate your time and assistance in this matter.

First and foremost, the greatest concern we have with this idea is cost to our citizens. As you know, we are in a very rural area of the state and residential building has been down over the past few years. We are looking forward to an increase in building as the economy improves. However, things such as the added expense of hiring a private company to do the onsite sewer determinations would be a detriment to many in our area considering building a house.

Another player in this cost concern is that of the upcoming changes to Stormwater Management permit fees. For any property owner who disturbs one acre or more, the suggested permit fee that DCR/DEQ is recommending when this is turned over to the localities is \$2,700, twenty-eight (28) percent of which will be returned to the

Commonwealth. The locality can set any fee they wish, but to cover the costs of oversight, payment to the state, etc., the very least we could charge would be \$1,500. (Note this is yet to be determined by our Board.) Due to our area being in a rural location, it is not uncommon for a new building site with a long drive to qualify for this one acre of land disturbance.

The possibility of two new, costly fees for prospective home builders could be very detrimental to our economy in Scott County. It would definitely cause hardship and perhaps even reduce the number of new homes being built.

One other concern that we have, that perhaps other, more-populated counties may not have, is the lack of competition for these private companies should this service in fact be privatized. From looking at the map that is shown on the SHIFT website, I see that there are no private companies within our county that offer this service and only one or perhaps two such businesses in our neighboring counties. That presents a problem in itself because pure, simple economics of supply and demand proves that the less competition the higher the price will be.

On behalf of the Scott County Board of Supervisors, I respectfully ask that you pass along our opinion that the current on-site sewage program should remain as is and that privatization should be avoided. Perhaps in some parts of the state privatization could be initiated and work perfectly, but considering the negative impact we feel this will have on our economy in Scott County, we therefore oppose privatization of this program.

Again, I appreciate your willingness to present our concerns to the SHIFT Stakeholder committee.

Sincerely,



Kathie Noe
County Administrator

C: Dr. Sue Cantrell
Mr. Brad Stallard

Received September 12, 2013

Please note my suggestion below following this Committee's task of "Identify ways to improve or change the Department's fee structure to help increase privatization of direct services".

The most effective way to do this could be to raise the application fee in which VDH charges to process and issue permit for an individual On-site Sewage Disposal System to the same fee of an average private fee to perform the same service. In my opinion \$850.00 for the average residential on-site sewage system should make the total cost competitive in most portions of the state (possible exception for northern VA) as long as the application fee VDH charges for OSE/AOSE submissions remains \$225.00.

Thank you for your consideration in this matter.

Richard Rouse, AOSE



A-NPDC

ACCOMACK-NORTHAMPTON PLANNING DISTRICT COMMISSION

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September 23, 2013

Mr. Jon Richardson, R.E.H.S.
Environmental Manager, Senior
Eastern Shore Health District
Accomack County Health Department
P.O. Box 177
Accomac, Virginia 23301-0177

Dear Mr. Richardson:

Thank you very much for your August 20 presentation regarding the Virginia Department of Health's (VDH) recent efforts to establish the Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Advisory Committee to consider further privatization. On behalf of the Eastern Shore of Virginia Ground Water Committee, I am submitting this letter in opposition to the privatization of all site evaluations and design of on-site sewage programs.

The Committee is extremely concerned that the membership of the SHIFT Committee appears not to have even one dedicated consumer representative. Frankly, how can there be a stakeholder committee of any seriousness that does not include even one person dedicated to representing all of the users, including the vast majority of moderate-income users, of these systems? It renders the work of SHIFT suspect.

The Committee is very concerned that it appears that SHIFT is more concerned with maximizing private participation than protecting public health. Public health should not be second priority because new systems generate more revenue for private AOSEs, yet we hear reports that repair designs languish while new systems are submitted and completed ahead of them. How does VDH intend to solve this problem and prevent it from occurring if further privatization occurs? The Committee values and appreciates the role that the VDH has historically played in relation to protecting public health and think that should remain your top priority.

Further, since the Department of Professional and Occupational Regulation oversees licensure of AOSEs, the Committee is particularly interested in a description of the process VDH will use to protect public health if privatization

occurs. Some of the ideas presented in the SHIFT meeting summaries appear to place private profit ahead of public health.

Virginian taxpayers have been paying, by their taxes, for VDH design services for decades and this refrain in the SHIFT meeting summaries that VDH services are free is wrong and should be corrected.

Additionally, the Ground Water Committee requests that a meeting of the SHIFT Committee be held on the Eastern Shore to allow our citizens an appropriate chance to participate. With our remote location and unique environmental conditions, the Eastern Shore deserves the opportunity to host one of these meetings in order to both hear the SHIFT Committee directly and to have our concerns heard.

Sincerely,



Elaine K. N. Meil
Executive Director

cc: Curt Smith, Director of Planning
Richard Hubbard, Chairman, Eastern Shore Ground Water Committee
Delegate Lynwood Lewis
Senator Ralph Northam
VAPDC
VACo

Received 10/2/13
Anonymous

Privatization has a big impact on ordinary people who are going to be pitted against public and environmental health policy. The citizen has to have opportunity to be its own advocate. This is possible with 1. easy access to information, 2. reasonable initiation to the process and 3. a competitive environment. What is mandated versus what is designed has to be easily understood.

Too much money is at stake for the homeowner. If the three elements are put in place, I believe it will help the State meet its public health and environmental goals.

Initiating a septic repair or replacement is a costly process where little or no competitive incentives exist.

It is my understanding that Soil Engineers who design the systems usually, but not always, have a financial incentive to design toward a certain product or brand that they represent. Design work, rather than being unbiased, is influenced by the potential for profit on the systems they sell.

1. It should be required that this bias, influence, or feature of the Soil Engineer's work be acknowledged and recognized at the very onset of the design work to be initiated. A hidden agenda or a sub-rosa aspect to the engineer's work can only undermine the integrity of the profession and compromise the validity of their reports.

Soil Engineers may say that designing to the product is designing to the problem. That may be somewhat true, but without easy access to the process and in the absence of a competitive environment, not all system solutions may reflect the most cost effective approach. Designing septic systems without full disclosure and without competition leads to over-design and inflated expense to the homeowner. The bottom line: a bad experience.

2. If Soil Engineers insist on selling product, I would like to suggest that fees for design work by Soil Engineers be kept to an absolute minimum - \$200? The design work can be subsidized through the sale of product. When a homeowner faces a huge wall of expense, especially for septic problems, it usually puts cement in their shoes. Making the design process affordable and accessible eases this prospect. Affordable design fees will encourage homeowners to initiate the process and seek a couple of options. It will help foster a more competitive environment. Selling is part of the work of many professionals and making money on the sale of product is a very acceptable practice as long as it is acknowledged to the customer. .

3. The homeowner must have the ability to advocate for how *their* money is going to be spent. A healthy professional environment has to begin with ease of access to the process. It can only be sustained with a competitive market.

4. A more open design process will keep Engineer's and all players on their toes. Though on occasion there may be a difference in interpretation of soil conditions and other environmental factors, I think it will be rare. If soil is bad, it is bad, just how bad is the issue. If opinions challenge the process, it seems that as long as the VHD requirements are being met, it should work out.

Wednesday, October 30, 2013 10:38:57 PM Eastern Daylight Time

Subject: SHIFT proposals

Date: Monday, October 28, 2013 2:30:10 PM Eastern Daylight Time

From: Baker, Tim (VDH)

To: kwilder@virginia.edu

Hello Kelly,

I would like to submit some comments on the most recent SHIFT proposal. I am a member of the internal SHIFT committee for VDH. My point of reference is that I am a District Env. Manager of 3 localities. I have 30.5 years of experience so I have seen the onsite sewage program grow and develop into the current program. Of my localities, two have subdivision ordinances that are rarely used and one locality has a very robust and detailed ordinance. The two localities have very little private sector activity due to ongoing slow economic growth. The one robust location receives private sector soil/design submissions often and has for 15+ years. I have both specific and general comments. I would preface that these comments are based upon my experience, local knowledge and observations of the program.

Specific comments:

Page 6; #15; Work Expectation – I have more than one concern here but by far the biggest one is to require scaled drawings & site plans. For certification letters and subdivision submittals I totally agree. But, for construction permits I strongly disagree for the following reasons. A) We must all keep in mind who the target audience is for a construction permit and that is the property owner and contractor, not surveyors and draftsmen. The key elements are triangulating drainfield corners, house corners and well sites or well areas. B) Anyone with any knowledge and experience in this program can easily do this with a tape measure, straight edge and neat drafting techniques. A legend should be included on the drawing page to denote the measurements in a clear/concise manner. These measurements should be taken from permanent reference points, just like a survey or scaled drawing. But, the final product of a hand drawn sketch with triangulated measurements is very acceptable and often times much more clear and informative to the target audience. C) I do realize that requiring a scaled drawing takes longer and can result in a higher cost to a property owner but that should not drive this decision. Taking longer also penalizes VDH in the 15 work day time-frame since the field work and drawing must be provided in that time vs. who knows how long the private sector has taken to arrive at the same point. Also, in many instances the scaled drawing is submitted after yet another survey is performed with the drainfield shown on the survey. D) This is an extra survey beyond the original survey to establish property boundaries, again increasing the building/development costs. We must ask, what do we need to accomplish, give clear information/details for the reason to draft a permit to begin with (drainfield, well, set-back distances) or is our goal to make sure a 60ft. drainfield line is to scale to a 500ft. property line? The answer is obvious. **Scaled drawings should be optional at most with professional judgment guiding when it's needed.**

Page 6; #16; Level II review of both VDH & private sector work – Where will the resources come from to perform 100% level II reviews? No doubt, it will not be from VT soil scientists or VDH staff. How can this occur since it will result in doubling the time to each site, especially when again trying to meet a 15 work days limit? VDH already has an internal QA program in place and this can be added to VENIS if needed for public viewing. If the private sector wants to do their own level II review, that is also available via FOI on any site.

Item # 24.A. – VDH should not design pumps but should continue to perform soil/site work to ID a drainfield footprint and then require plans from a PE to address submission of formal plans, pump curves, specific systems/components and inspection of these components when the system is installed. This has been our District policy for 20 years + and as of this time, we have not had any problems at all. We issue probably 25% of our permits in one locality as a pump system. We brought the PE community into this part of the program long before it was a thought in most localities. VDH staff do not have a PE stamp and should not take on the liability.

Item # 25; use of Indemnification Funds – There must be some realization whether or not it's agreed upon that citizens of the Commonwealth that pay taxes do support some expectation of government service and issuing sewage permits is one. Currently, there is a permit fee waiver for anyone that qualifies and numerous agencies with very low interest loan money and many times free money to assist with sewage and water issues. If VDH stops or reduces involvement in this area should all tax payers expect a reduction in taxes? The % of the money for each application for permits is where this fund arises. So, the proposal is to just shift the source of what group of people make up the difference in the fee structure. How is this at the nucleus any different from the current model where one group helps to support (increase fees) another? Again, this seems to be a bottom-line driven proposal.

Page 1 of 2

General comments:

There must be some degree of recognition that the work VDH does is and should be different than the private sector. This may not cause consensus but must be recognized as an expectation of many residents. Therefore, the cost is different because VDH is not in this work for bottom-line profit like the private sector. Nor can VDH be to blame for inactivity of behalf of a slow economy or choosing to perform this business on a private level in areas where development is slow even during strong economic times. These are private business model decisions and cannot or should not be allowed to be manipulated by a public agency.

Certification letters should not be performed by VDH and all should be done by the private sector. Almost exclusively, certification letters are speculative in nature and not a VDH target.

Contractors should not be allowed to change or substitute systems. They should install systems as designed and permitted.

VDH should NOT be required or expected to perform system installation inspections of systems designed and permitted by the private sector. Whoever designs and permits the system should be the responsible/required party to inspect the installation for numerous reasons, many of which are site specific. In order to fully understand what the site should look like at time of inspection, one must know what it looked like when the permit was issued and before a tremendous amount of excavating has occurred.

All certification letters and subdivisions should be performed by the private sector. Where there may be problems with this, the private sector must know that each localities subdivision ordinance is different and concerns about not adhering to their ordinance should be discussed with representatives of those specific localities, not VDH.

The 15 work day limit for a bare application should be eliminated. If some of these proposals are adopted it should be recognized that this reference is not realistic.

If VDH is brought to the same level of private sector expectations, then every single aspect should be equal (GPS readings on all sites, etc..) and "cherry picking" of what some want and don't want to do should not be allowed.

In fact, the most common sense approach to many of these points of contention about work product could be easily solved by reducing the expectations of both VDH and private sector, not increasing them. A work group could decide what items must be included, what should be included and what is optional.

Many of these proposals will end up costing the property owner more to obtain a permit and develop property than it has in the past. I doubt that is the desired goal to a more extended and informed group of stakeholders.

Thank You!

Tim Baker, EH Manager Sr., R.E.H.S., A.O.S.E.
West Piedmont Health District
540-484-0292, X209

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October 30, 2013

Mr. Erik Johnston
Director of Government Affairs
Virginia Association of Counties
1207 E. Main Street, Suite 300
Richmond, VA 23219

Dear Mr. Johnston:

RE: Safety and Health in Facilitating a Transition (SHIFT) Stakeholder Meetings Relative to Privatization of Direct Delivery Service of the Onsite Sewage Program Statewide

Even with the information that we are one of only three counties in Virginia that still use the services of VDH for onsite sewage programs relative to our subdivision ordinance, we still believe that it is in the best interest of our citizens to leave the procedure as is for our county. Over the past five (5) years, we have had five (5) such subdivision reviews worked up by the Health Department as part of our Subdivision Ordinance requirement. All five of those requests were approved.

Having only five subdivision-related requests in five years brings many conclusions to the table:

1. Our drive to encourage more building in our county is a much needed and justified one as five subdivision review permits in as many years does not show a lot of growth.
2. Trying to encourage more building and at the same time telling the prospective builder he/she will need to pay additional fees to do this seems counterintuitive.
3. Our citizens are already facing higher permit fees when they build homes (i.e., stormwater management permit fees set to take effect on July 1, 2014). Adding possibly two more charges (one for the private company and one for the health department), is just another layer of burden on an already heavily-burdened process.
4. Scott County does not have any private companies doing this onsite sewage work. Instead, our citizens would need to seek out service from a company in either Washington County or Wise County.
5. Lack of private companies in the county offers no competitive edge to pricing, thus the very good likelihood that our citizens would be paying much higher prices for this work.
6. With the small number of permits issued in our county over the past five years, it does not seem very likely that a private company could be enticed to locate in our

county and/or even devote business time to our county. The average number of permits overall that were issued per year over the past five years is less than 100.

I spoke to the Chairman of the Planning Commission, Rodney Baker, who oversees our Subdivision Ordinance. He had the following comments:

"My concern with the proposal is the availability of private sector providers, and the lack of sufficient workload being a disincentive to providing services, with limited competition increasing costs. We are already at a disadvantage when it comes to encouraging new home construction because of the income tax disparity between us and nearby Tennessee communities.

The Scott County Planning Commission considers the need for health department involvement during the review of subdivision applications. For subdivisions of property that involve the creation of large lots, or those lots where residential construction is not anticipated to be occurring in the near future, we typically only require a notation on the plat that health department approval has not been provided. For subdivisions of property that are more residential in nature, we may require single lot certification letters or VDH subdivision review. We take steps to be responsive to the time constraints of the property owner if health department involvement is required, and if requested will approve subdivisions contingent upon receipt of health department approvals so that the applicant doesn't have to wait until the next scheduled planning commission meeting for final approval."

Considering comments from all of the people that I have spoken to about this concern, it appears that everyone is of the same opinion: Do not mandate that each county must use a private company to conduct this work. Rather, it would be better to perhaps provide an awareness campaign and *encourage* the landowners to use private sector companies to do this work, but do not make it mandatory.

Again, thank you for allowing us time to tell you why we are against mandatory private sector on-site sewage programs.

Sincerely,

Kathie Noe
County Administrator

C: Dr. Sue Cantrell
Mr. Brad Stallard

From: Elaine Holeton
Sent: Thursday, October 31, 2013 3:40 PM

Thank you for giving me the opportunity to comment on the private sector /health department questions.

Personally I enjoy having Health Department employees available to assist us when we need them for questions here at Planning, they are always responsive and put the interest of public safety/environment over the interest of making money. My concern is that by reducing their role, less personnel will be available to assist when needed for public health issues that arise from time to time.

Another concern is that services that are turned over to the private may result in less concern for public safety/environment.

While there may be some small differences in the amount of time it takes for a Health Dept official to visit a site as opposed to an AOSE, I believe the difference in costs available now, and the option that the customer has in quick turnaround/highcost for the service as opposed to a slower response/lower cost is a good thing because it gives variety to the marketplace.

To my knowledge we only have two AOSE in a three county area, Im not sure if have the capacity to handle the entire workload.

I also like the idea of the Health Dept central to recordkeeping as it relates to records for wells and septics, this is very important to localities.

I have not had negative issues with either the Health Dept or AOSEs so other than the comments above I am not sure how I may be helpful, but if there is anything else I can do please let me know.

Thank you,

Elaine R. Holeton, CZA
Planning and Community Development
Grayson County, VA

From: Michael Lynn **Sent:** Monday, November 04, 2013 5:37 PM **To:** 'kwilder@virginia.edu' **Cc:** 'Mike Toalson'; Roadcap, Dwayne (VDH) **Subject:** Shift Comment

Kelly:

I am a business owner in Northern Virginia employing 42 employees almost entirely dedicated to soil investigation, design, permitting, installation and operation of conventional, alternative and communal onsite sewage systems. I have more than 25 years of experience in the field and have served on many previous committees related to septic and health department related issues. Through IEN and other committees that followed the IEN process, we always found consensus. I hear that's not possible this time on the larger issues and am disappointed. I have stayed out of the Shift meetings but have talked to some people and seen quite a few emails. It's odd that I represent the Home Builders Association on the SHDAC committee but this time find myself somewhat at odds with the position HBAV has taken.

Here is what I think are the truths.

1. VDH wants out of the investigation and design process to the greatest extent possible. Anything less takes focus away from what VDH believes are the more important tasks necessary to protect human health and the environment and manage their program efficiently.
2. For the most part, the majority of the local Health Districts are already in this mode since legislative changes went into effect more than 10 years ago. It's the complete elimination of the bare application process that has everyone upset. Its change, its been that way for 40 years, its difficult, it hurts.
3. The Builders and many homeowners want the option to use private sector design services when its beneficial and want to maintain the option of using VDH services when its beneficial, especially when it's known or very likely that a simple conventional system will suffice.
4. When private sector services are utilized, everyone wants expedited processing and less back and forth between reviewers and AOSE's/ PEs.
5. Everyone wants VDH to maintain its role as regulator, record keeper and enforcement officer as it relates to Onsite Sewage Systems and wells. We want soild regulations that address 90 – 95% of the situations that arise. The engineers want flexibility to handle the other 5 – 10%.

So how do we reach consensus, Pretty easy I think.

1. New Legislation is required to cut the processing times for applications from private sector designers at least in half, maybe by 75%
 - a. An online application and permitting process would be relatively simple if managed like the DEQ permits for small systems.
 - b. Application fees to the VDH would need to go down and a corresponding increase in "bare application fees" to reflect real world conditions.
 - c. This process would continue to be limited to residential systems less than 1,000 or 1,050 gpd and AOSEs could design any system under these size limits to eliminate cross contamination by AOSE and PE.
 - d. This would draw clean lines, its either a bare application for septic only, residential less than 1,050 by AOSE or PE and anything else is PE.
2. New Legislation would likely be required to clarify that VDH EHS has the authority as an AOSE to site, design and inspect conventional septic systems up to 1,000 or 1,050 gallons per day just like they have been.
 - a. Local Health District could not accept bare applications unless time frames for private sector work were being met without deemed approval. If local HD is too busy with private apps that they are deeming applications approved then they cannot accept bare apps at that time unless for the impoverished or repairs.
3. New Legislation or policy or regulation would be needed to give licensed installers and licensed operators clear authority to replace like kind components without a permit but required to notify VDH. This includes every mechanical component of the onsite sewage system to the dispersal area. Modification, addition or repair of a dispersal area requires a permit, the rest is maintenance. This would greatly reduce the number of "Permits"
4. As for oversight, dual inspections and dual soil reviews etc. If a local government thought that this was a critical enough component, then that locality needs to find the resources to do all of this

- within the state mandated timelines at their own expense with separate employees, not VDH.
5. An online process for issuing operations permits is also needed just like the one DEQ uses for a certificate to operate small systems.
 6. Establish a central location in Richmond for reviewing these online applications for permits and operation's permits. If the private sector screws up, issue a fine, report them to DPOR.

What should industry and the private sector do to help.

1. Concede that every onsite sewage system, conventional or alternative needs a 100% reserve area. Only a PE under 163.6 could design an AOSS without a 100% reserve area and additional O&M would be required to offset the risk.
2. Let VDH continue to issue conventional septic permits the same way they do now, forget about all the effort required to bring the paperwork up to the same level as the private sector. This is an enormous task VDH was not planning on because they were pretty confident going into this process they were going to be out of the design end. VDH employees are supervised by one or more levels of management to ensure compliance with the regulations. Most private AOSEs and PEs are not supervised by anyone above them so more thorough and higher quality paperwork is justified.
3. Have local governments concede that additional regulation or requirements for septic systems are not necessary now that there is licensure, thorough regulations and civil penalties and that even simple well-meaning local regulation's and requirements only add to the confusion of everyone who works in more than one County, add to the difficulty in VDH running a smooth program and in most cases unnecessarily add to the final cost to the citizens of Virginia without improving performance or reliability.
4. Remove the requirement for VDH to intervene as a decision maker on private sector designs. If the client chose private sector then all inspections and final approvals remain there.
5. Legislating these changes removes the arguments of the AOSEs, PEs and LPSS that VDH doesn't have standing to do this work.

Thanks

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Received November 5, 2013

Institute for Environmental Negotiation (IEN)

RE: Public Comment for SHIFT Process

Dear Ms. Wilder,

The Virginia Association of Onsite Soil Evaluators (VAAOSE) membership is composed of licensed OSE's throughout the Commonwealth and would like to respectfully submit the following position for your consideration. Please feel free to share this information with the SHIFT Committee as public comment.

The Virginia Department of Health (VDH) has perpetuated a persistent misunderstanding of Regulator roles and responsibilities since the Authorized Onsite Soil Evaluator (AOSE) program expired under licensure of the current OSE program. Nearly two decades ago, Chapter 747, Acts of the General Assembly in 1994, established a mandate for VDH to accept applications from individuals not employed by the Department,

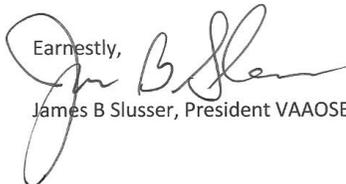
"The Board, Commissioner, and Department of Health shall accept private evaluations for septic system or other onsite sewage system permit applications only from authorized onsite soil evaluators".

The mandate for VDH to accept soil evaluations and designs from a privately certified and or licensed professional appeared to differentiate the role of a Regulator and Service provider (a function that requires a license today); roles and responsibilities considered to exhibit unique and explicit differences between governmental and proprietary functions.

The role of a Regulator is to secure public health outcomes by administering regulations adopted by the State Board of Health. In addition, ethical enforcement of state and local rules are predicated upon VDH removing the appearance of a conflict of interest whilst serving as Regulator and Service Provider. With the recent adoption of civil penalties in 2013, the Regulator now has additional powers to impose fines and penalties on homeowners where the soil evaluation and design, *septic permit*, and inspection were all conducted by the same entity (Regulator). While VDH is required to process "any" application less than 1000 gallons per day, agency staff may be reluctant to accept citizen complaints for work done by themselves while fulfilling the role of Service Provider (proprietary function). Given the multiple layers of potential conflicts of interest, our Association's concern for equitable enforcement appears justifiable.

In closing, we conclude with the position paper issued by the National Onsite Wastewater Recycling Association (NOWRA), dated October 11, 2011 (attached). We would like to continue VAAOSE's work with the IEN and VDH by building consensus for removing the appearance of all Regulator/Service Provider conflicts of interest held by the Virginia Department of Health. Upon completing such tasks, the Commonwealth will benefit through greater transparency, better perceived public trust, and allowing the VDH to focus its resources on program administration and oversight; areas that already have strong consensus and support.

Earnestly,



James B Slusser, President VAAOSE

Appendix 7



October 11, 2011

Ms Pam Pruett, President
Virginia Onsite Wastewater Recycling Association
P.O. Box 155
Star Tannery, VA 22654

RE: VDH Privatization of Onsite Sewage System Site Evaluation, Design and Installation
Inspection

Dear Ms Pruett,

NOWRA applauds the initiative that the Virginia Department of Health has taken to evaluate and consider removing itself from providing site and soil evaluations, system design and system installation certification services and instead allowing only private-sector professionals to offer these services. However, VDH is apparently intending to reserve the right to provide these services where a homeowner's income is below the federal poverty guidelines. While NOWRA understands the concerns that VDH has in ensuring appropriate systems are properly sited, designed and installed where property owners might be unable to afford such systems unless the costs are subsidized, we believe that there are more appropriate approaches than using department staff to assist low income families with siting and design of suitable onsite systems. We fully agree with VOWRA's position to encourage VDH to privatize site evaluation, design, and installation inspection of onsite sewage systems.

If onsite rules are to be respected, their enforcement must be timely and equitable. Everyone must be equal under the rules. This implies that compliance cannot be deferred because property owners face financial hardships to do so. If the rules are important then compliance must be enforced regardless of individual circumstances. This may mean establishing assistance programs to help families finance repairs and replacements just as the Clean Water Act does for municipal facilities.

NOWRA urges VDH to redirect its resources that are intended to be set aside for subsidizing siting and design services performed by its staff to assist low income households. Instead VDH should focus on onsite system maintenance and compliance to assure public health and Virginia's water resources are protected. Department oversight to ensure that existing systems are operated and maintained properly needs significantly more attention than relying on complaints-based enforcement to ensure compliance.

The primary role of the regulatory community is to administer the onsite sewage program fairly and consistently for the benefit of the public. For any state to permit their staff to provide siting, design and installation inspection services is inappropriate. Regulators are given the authority and responsibility to establish performance expectations of systems, to verify that the owner operates and maintains the system in accordance with the permitted performance expectations, and to verify that all practitioners are competent to perform the necessary services. To provide siting and design services to individual property owners VDH creates competition with the private sector, which reduces the capacity of the private sector to provide these services because they must compete with subsidized services provided by state or local departments. Additionally, and more importantly, significant conflicts of interest are created by this practice. By providing and approving these services themselves, the regulators usurp the authority of the property owners who received these services to site and design their own system (through a private

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People Caring About Water

Appendix 7

licensed agent) yet the responsibility to ensure the systems comply with the requirements remains with the owners. Thus, if any of the systems malfunction because of siting or design, who would be responsible? Not only would this create a liability issue for VDH (to which they are probably immune) but it creates hardship for affected property owners because they would not be able to receive restitution from their installer since the installer only constructed what the regulator sited and designed.

NOWRA’s members believe the competency and integrity of the regulator role is of extreme importance to the protection of health and the environment. For this reason, regulators must be free of conflicts of interest. NOWRA’s Model Code Framework Committee spent significant time in reviewing the issues of regulator/installer responsibilities and professional conflicts of interest. The Committee clearly stated that regulators should conduct only those activities that are defined as a regulatory role (see table below).

Conflicts of Interest for Individuals Serving Multiple Roles
NOWRA Model Code Framework

| ROLE | Owner | Site Evaluator | Designer | Installer | Operator | Pumper | Vendor | Plan Reviewer | Inspector | Monitor |
|----------------|-------|----------------|----------|-----------|----------|--------|--------|---------------|-----------|---------|
| Owner | X | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| Site Evaluator | | X | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| Designer | | | X | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| Installer | | | | X | 1 | 1 | 1 | 2 | 2 | 2 |
| Operator | | | | | X | 1 | 1 | 2 | 2 | 2 |
| Pumper | | | | | | X | 1 | 2 | 2 | 2 |
| Vendor | | | | | | | X | 2 | 2 | 2 |
| Plan Reviewer | | | | | | | | X | 1 | 1 |
| Inspector | | | | | | | | | X | 1 |
| Monitor | | | | | | | | | | X |

- 1: Potential Conflict. A consumer protection issue that can be avoided by practices such as disclosure and information
- 2: Significant conflict that should be prohibited by rule.

Regulator performance of activities that are the responsibility of non-regulatory professions was determined to be a significant conflict of interest to be prohibited in adopted codes. From their review, the Committee developed the table above that presents NOWRA’s position on this issue. We encourage VDH to give serious consideration to these potential conflicts of interest to avoid denigration of their onsite sewage program.

We are confident that if VDH removed itself from all siting, design, and installation certification of systems to focus on their public and environmental health mission, the program would provide greater protection of the Commonwealth’s water resources.

If NOWRA can be of any help to VDH in addressing this issue, we would pleased to do so.

Sincerely,



Richard J. Otis, PhD, BCEE
President
National Onsite Wastewater Recycling Association

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People Caring About Water



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November 8, 2013

Institute for Environmental Negotiation (IEN)

Re: Public Comment for SHIFT Process

Dear Ms. Wilder:

I am a licensed Alternative Onsite Soil Evaluator (AOSE) practicing in the private sector on the Eastern Shore of Virginia (Accomack & Northampton Counties) and am President and co-owner of Affordable Septic Solutions, Inc., in Melfa, Virginia. Like many private sector Onsite Soil Evaluators, my business has severely suffered not only due to the fragile economy but also due to the fact that I am forced to compete with the Virginia Department of Health for onsite soil evaluation and design work. While I fully support fair and open market competition, it is almost impossible to compete with the Department when their services are subsidized and I am forced not only to charge my clients for my services, but my clients are still charged an exorbitant “application fee” from the Department on top of my fee. One doesn’t have to do the math to figure out that from a dollar and cents perspective property owners who need to obtain a sewage disposal system for their property are going to gravitate towards using the Department’s direct services over those of the private sector.

I can’t help but think that a lot of the opposition that I have been hearing against privatization may stem from a misunderstanding of the current services offered by both the Virginia Department of Health and by licensed professional Onsite Soil Evaluators (OSE) working in the private sector as well as what the actual intent is for more private sector involvement. I worked as an Environmental Health Specialist Senior for the Eastern Shore Health District for nearly 13 years and left the Department as an Environmental Health Supervisor for the District’s onsite sewage and water program. Since 2005, I have been the President and co-owner of Affordable Septic Solutions, Inc. Having worked both in the public and private sectors, I feel I have a rather unique insight into this issue.

First, I have heard the comment made that the private sector OSEs want to take the regulatory and permitting authority away from the Virginia Department of Health (VDH). This is a false statement. In working with private sector OSEs from around the State on this issue, I know of no one who advocates or wants to remove the regulatory and permitting authority away from the Department. Currently the Department reviews all private sector OSE application design packet submittals for Certification Letters or Sewage System Construction Permits. The private sector fully expects that VDH as the regulatory authority will continue to review and process these application submittals just as they currently do for private sector OSE and professional engineer design submittals. The reality is that most soil evaluations and sewage system designs performed by VDH staff themselves receive very

“Providing economical and environmentally friendly solutions to your sewage needs”

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little oversight and most Permits and Certification Letters are issued by individual VDH-employed OSEs without any additional layer of review prior to issuance. It has been VDH policy in recent years that a Permit or Certification Letter is considered “issued” once it has been signed and dated by the VDH OSE who performed the work. Private sector OSEs, on the other hand, have their work reviewed by the same VDH-employed OSEs prior to issuance so private sector work receives an additional layer of review. The private sector welcomes VDH review and expects such review to continue.

Second, I've heard it argued that soil evaluation and design work performed by VDH themselves produce a better quality product than is offered by the private sector at a much more affordable price. Again, this is a very misleading statement. While I am not writing this to criticize the work quality produced by the Department, the simple fact is that the private sector has more resources available to them to be able to provide detailed and accurate soil evaluations including GPS mapping as well as “to scale” drafting and design services. Also, private sector OSEs constantly undergo training at their own expense in order to keep up-to-date on VDH regulatory and policy changes as well as new sewage products and treatment technologies. They also invest in the necessary equipment to more efficiently perform their work and remain competitive in the marketplace. The Department is somewhat handicapped in this respect as their equipment acquisitions and technical expertise are often limited by budget constraints and travel moratoriums. Also, as a regulatory agency, VDH is forbidden from specifying specific manufacturer products as well as consulting with customers as to their available options. This can be a problem for VDH, such as with designing pump stations, as they cannot specify specific make and model pumps or control panels. They have handled this in the past by trying to give a “generic” or “or equal” design parameter and then allowing the sewage system installer to pick the specific make and model components. However, this has become problematic since under the current DPOR licensing, if an installer picks these components himself, then he is in violation of the *Code of Virginia* for “practicing engineering without a license” and could then in turn jeopardize his own installer license. Also, not all components are “equal” and while one horsepower pump might be sufficient for a specific pumping scenario, another horsepower pump by a different manufacturer may not and thus jeopardize the operation and longevity of the homeowner's new sewage system. Private sector OSEs, on the other hand, can specify specific make and model product information and in fact are required by the Regulations to do so as part of their design submittals. As part of their design, they have to be able to justify the components they use and that they are properly sized and chosen for the specific performance of the sewage system. Finally, the private sector has the ability to consult with their clients in order to better serve their needs and help insure that they are able to make an informed decision (taking in factors such as cost, water use needs, and reliability) when choosing a sewage system, conventional or alternative, and help insure that their sewage system is designed properly in accordance with the Regulations. Designers must take into consideration such factors as whether the homeowner will have a garbage disposal, water softener, or multi-head shower. Will the home be the homeowner's primary residence or will it be a seasonal use home? Will it be used as a year round rental property or a weekly summer rental? All of these are important factors in properly designing and sizing a sewage system that can only come from consultation with the client.

The idea that VDH is able to offer evaluation and design services “cheaper” than the private sector is also a fallacy. The truth is that the only reason VDH appears to offer these services for less is that VDH services are subsidized at taxpayer expense whereas the cost for private sector services are borne out by the actual sewage system end user rather than by our tax dollars. The fact is that VDH is

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alone among state agencies in providing direct services. These services were once necessary as no viable alternative existed to provide them. This business model, however, is now outdated with the establishment of professionally licensed and trained OSEs working in the private sector throughout the Commonwealth. Privatization would also prove a tremendous cost savings to the Commonwealth as well as to the counties and municipalities and the tax money spent to currently subsidize VDH evaluation and design programs could then be put to better use such as funding local programs, advancing education efforts, and improving roads and infrastructure just to name a few.

It has also been argued that VDH-employed OSEs are better trained and more up-to-date on the Sewage Regulations than the private sector OSEs. Again, this is a falsehood. The fact is that whether working in the private sector or in the public sector, OSEs are required to undergo the same training and are held to the same strict training standards. The DPOR OSE license must be renewed every two years and as part of that renewal, OSEs must obtain 20 hours of continuing education credits every two years. Many private sector OSEs often exceed the 20 hour minimum as they frequently attend trainings not just for the education credits, but to learn more about new products or regulatory changes that may impact their clients. Training of OSEs, however, is becoming increasingly problematic for VDH as it can take 2 years or more depending upon an applicant's education and experience to obtain the required DPOR license. The final exam to obtain the license is considered to be extremely difficult and many have likened it to having to pass the Bar exam for attorneys or the CPA exam for accountants. That means that it is becoming increasingly difficult for VDH to fill vacancies when staff leave Department employment. In accordance with the *Code of Virginia*, only licensed OSEs and professional engineers can practice soil evaluation and design work for sewage systems in the Commonwealth. OSEs, whether working private or public, are granted a special exemption in the *Code of Virginia (Section 54.1-402.A.11)* that is an exemption to the practice of engineering to allow them to conduct soil evaluations as well as design certain residential sewage disposal systems under 1,000 gallons per day of water use. That means that VDH can only employ licensed OSEs to be able to perform soil evaluation and design services. If the sewage needs of homeowners and property owners in the Commonwealth are going to be met, then the role of the private sector OSE will become increasingly important and stands as the obvious option to be able to fill the void left by the Department's staffing issues.

One of the biggest arguments that I've heard in opposition to more private sector involvement is that if the Department stopped offering soil evaluation and design services, the private sector OSEs would jump up their prices to where they wouldn't be affordable to the public. I find this argument to be rather ridiculous. An understanding of basic economics will tell you that the marketplace sets the price. As with any small business operating in the private sector, you have to be competitive if you want to remain in business. If I choose to charge \$500 for "XYZ" service and my competitor turns around and offers the same service for \$300, who is the customer going to hire? I'm either going to have to match or do better than my competitor if I want the work. Eventually pricing will stabilize at rates that allow our businesses to turn a profit while still remaining competitive in the marketplace. The same already holds true for surveyors, appraisers, contractors, and other similar professions.

OSEs working in the private sector are not trying to upset the proverbial apple cart. Like VDH they want a smooth transition of services and are just as concerned at protecting both public and environmental health. The private sector is simply seeking a level playing field where they can compete for services on the open market that are currently being monopolized by VDH through their

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offering of tax subsidized services. In 2005, the Department commissioned an independent study to examine VDH's current business model and to seek recommendations as to how VDH could improve its business processes and operating efficiencies. In May 2006, the consulting firm of E. L. Hamm & Associates, Inc. published their report entitled: *VDH Re-Engineering Initiative Onsite Sewage System Program*¹. A copy of this 130 page report is available online on VDH's website at www.vdh.virginia.gov/EnvironmentalHealth/Onsite/newsofinterest/documents/VDH%20Reengineering%20Initiative_final_5.06.pdf. The study brought forth several key points and determined that the current VDH business model is operating in a direct conflict of interest by competing for services with the private sector while also regulating these same services. As the study concluded:

“Historically, the VDH has expended its resources on the permitting process, which includes the direct services of site and soil evaluation, system design and installation inspection, and not on risk assessment, monitoring or management of the existing systems. The private sector has the technical capability to adequately provide the direct services of site and soil evaluation, system design and installation inspection; consequently, this can allow the VDH to focus its resources in areas that can more fully realize its public health mission and assure that public health and groundwater supplies are adequately protected.

This study recommends that the VDH develop and implement a mechanism for handing over the delivery of the direct services of site and soil evaluations, system design and system installation inspection to the private sector. Completing the transition of these services to the private sector would allow for the free and open market to stabilize the process. VDH will remain responsible for the oversight and regulation of the AOSE program. In those areas of the state where providing these services is unprofitable or there is a large indigent population, VDH will need to provide for the services through unconventional or alternative means, such as subsidizing the private sector or enlisting help temporarily through related industries. It might even be necessary to continue to provide the direct services part of the septic permitting process throughout a transitional period as a provider of last resort to the indigent and in those areas of the state that are not adequately serviced by the private sector. The transition period should be long enough to allow for orderly change, but the process should be encouraged to move along at a rapid, albeit orderly, pace. In the meantime, the transition period will allow VDH to move toward its new vision and business model, which will include implementation of the ten essential environmental health services, and development of the core competencies necessary for implementation.”

The E. L. Hamm study also went on to say:

“The public environmental health is not likely to suffer as a result of a transition to private sector onsite septic permitting. The public environmental health should actually be better protected with more vigilance by the VDH being a result of the privatization effort. VDH should remain in an oversight capacity to assure quality control. VDH will provide for monitoring and maintenance mechanisms for the septic systems, and will monitor the AOSE program as well. VDH will constantly assess septic system risk factors, and will be in a better position to respond to the public needs and demands under the new business model with the implementation of the ten essential public health services. The VDH onsite staff will be in a position to focus on potential risk factors from failing, non-functioning, or non-existent systems that they are not now properly monitoring. The VDH focus can become more proactive than reactive to problems or potential problems. Investigative and outreach activities should receive more attention, as should regulation and enforcement, and research and analysis. These are the duties the VDH should be performing in the interest of public environmental health.”

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What the SHIFT Committee is attempting to do is actually come up with recommendations to VDH to implement a certain level of privatization of services that the E.L. Hamm study had recommended over 7 years ago! The reality that this study confirmed is that VDH is now on rather shaky legal ground with its current business model creating a conflict of interest with the private sector as well as facing emerging allegations that VDH may be in violation of antitrust laws by offering subsidized services that provide them with an unfair competitive advantage over the private sector. It would seem to me that it would be in everyone's best interest for VDH and the private sector to work up a viable plan to transition certain soil evaluation and design services over to the private sector in a way that doesn't jeopardize timely service to the general public or endanger public and environmental health rather than ultimately having the General Assembly or the courts to decide the outcome.

Sincerely,


Robert C. Savage, A.O.S.E.
President
Affordable Septic Solutions, Inc.

VDH Re-Engineering Initiative Onsite Sewage System Program, E.L. Hamm & Associates, Inc., Virginia Beach, 2006.

Ms. Kelly Wilder
Institute for Environmental Negotiation

November 12, 2013

Dear Ms. Wilder:

Thank you for inviting the Virginia Association of Professional Soil Scientists (VAPSS) to participate in the Safety and Health in Facilitating a Transition (SHIFT) third party, stakeholder process. We also wish to express appreciation for facilitating the SHIFT meetings and receiving our input. We understand that VDH seeks to address issues related to private sector participation in the onsite sewage program since approximately 35% of applications currently being submitted to the Department include private sector soil evaluations and designs. We understand that a fundamental goal of the SHIFT process is to promote and encourage the transition to private-sector design of both site and soil evaluations and onsite wastewater disposal system designs.

VAPSS is a not for profit association of professionals dedicated to the promotion of soil science, education, and technical excellence. VAPSS seeks to elevate the standards of practice for professionals that interpret biological, chemical, and physical properties of soils in the Commonwealth of Virginia. We seek to advance our members capabilities for protecting our clients' interests while satisfying the environmental and regulatory restrictions upon their projects. We have been surprised at the obstacles to resolution of the central issue in light of accepted precedents and clear benefits of separating the design from the code official duties.

Our primary objectives in participating in SHIFT are:

- Reduce the potential for conflict of interest between design and code official duties.
- Standardize work product expectations.
- Conformity to existing policy and regulations.

We support efforts to identify or recommend the means for an orderly transition to privatization as mandated by the General Assembly (reference House and Senate Bills); to wit: AOSE (SB415); Thou shall accept (SB963) & Issue w/in 20 days (HB2337) 1999; DPOR License (HB3134) 2007 and lets recall - Require submission OSE (HB2185) which was tabled in 2011. Requirements to embrace the standards of practice for site interpretation and design is also enshrined in the Codes & Statutes of Virginia, e.g.: 12VAC5-615; 12VAC5-650-60; 18VAC10-20-10, 145, 730; 18VAC145-20-160; 18VAC160; §32.1-163 & 164; §54.1-402, 410, 2302.



During our discussions we have identified barriers to greater “privatization” of the design services:

- Cost (contractual and commensurate VDH fees)
 - 80% subsidy for “bare application” direct services
 - Compliance w/ local government requirements (e.g. fees, zoning & more stringent requirements for setback, testing, reserve etc.)
- Failure to measure the VDH backlog & subcontract OSE services
 - Qualifications Based Selection requirements
- Failure to prioritize timely review and drafting of permits
- Double standards (e.g. scale drawings, pump curves, disclosure of limits, employ of unlicensed designers, sovereign immunity or Indemnification Fund)
- Conflicts of Interest (e.g. employer/client, revenue, regulatory duties/competition)
- Perceived availability of Licensed consulting OSE or PE

We expect these issues to be embraced in the final report. Furthermore greater consistency with existing VDH policies would remove many of the barriers perceived or substantial to soliciting a licensed professional to advocate for a citizen’s interest in developing real property.

We are pleased that you have provided an open forum for discussion of these topics. We believe these discussions have raised important topics and appreciate the opportunity to educate the panel concerning the complexities of interpreting soil and site conditions for the design of septic systems. We support the ability of all DPOR OSSP to perform services in accordance with the regulations regardless of employer. As the largest design services employer in the Commonwealth we expect the VDH to lead the way in developing policies which reduce the appearance of conflicts of interest.

Thank you for considering our concerns, in support of the Virginia Association of Professional Soil Scientists members who are trusted to serve the public.

Sincerely yours,



Jeff T. Walker,
VAPSS President 2014