

MEMORANDUM OF AGREEMENT

BETWEEN

THE VIRGINIA DEPARTMENT OF HEALTH

AND

**VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION**

WHEREAS, the Virginia Department of Health (VDH) and the Department of Professional and Occupational Regulation (DPOR) are each charged with protecting the health, safety, and welfare of the citizens of the Commonwealth (*Va. Code* §§ 32.1-2 et seq., 54.1-100 et seq.); and

WHEREAS, VDH is charged with ensuring the proper treatment and disposal of sewage from onsite and alternative discharging sewage systems (*Va. Code* § 32.1-164); and

WHEREAS, DPOR is responsible for regulating certain professions, trades, or occupations, including the “practice of engineering” (*Va. Code* Title 54.1); and

WHEREAS, VDH regulates the location, design, installation, and operation of onsite sewage systems via the *Sewage Handling and Disposal Regulations* (12 VAC 5-610 et seq., or successor, the “*SHDR*”) and

WHEREAS, VDH regulates the location, design, installation, and operation of alternative discharging sewage treatment systems serving individual single family dwellings via the *Alternative Discharging Sewage Treatment Regulations For Individual Single Family Dwellings* (12 VAC 5-640 et seq., the “*Discharge Regulations*”); and

WHEREAS, the *SHDR* and the *Discharge Regulations* require the preparation of engineering plans and specifications for certain onsite and alternative discharging sewage system construction permits; and

WHEREAS, Title 54.1 of the *Code of Virginia* prohibits the unauthorized practice of engineering; and

WHEREAS, the *Code of Virginia* requires VDH to accept designs for onsite sewage systems from Authorized Onsite Soil Evaluators (AOSE) when such designs are certified to comply with the *SHDR*; and

WHEREAS, VDH is responsible for certifying and otherwise regulating AOSEs (*Va. Code* § 32.1-164); and

WHEREAS, VDH employees in local health departments have for many years prepared construction permits for certain onsite sewage systems, primarily septic systems, utilizing prescriptive site and design criteria contained in the *SHDR*; and

WHEREAS, the *Code of Virginia* exempts certain activities from the practice of engineering but does not appear to specifically exempt onsite and alternative discharging sewage systems; and

WHEREAS, members of the community of professional engineers, including the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects at DPOR, have expressed concerns that VDH has, through its implementation of the *SHDR*, accepted and is accepting plans and specifications from non-professional engineers for onsite sewage systems which should be designed by professional engineers; and

WHEREAS, VDH and DPOR wish to cooperate in their efforts to protect public health, safety, and welfare through the implantation of each agency's regulatory programs; and

WHEREAS, VDH wishes to assist DPOR in ensuring that individuals do not engage in the unauthorized practice of engineering.

THEREFORE, BE IT RESOLVED, that VDH and DPOR hereby agree as follows:

1. The agencies will form a working group containing representatives from each agency as well as interested parties from the regulated and affected communities.
2. The working group will examine the apparent conflicts described above and attempt to make consensus recommendations for resolution, to the extent that such recommendations may be accomplished within existing statutory authorities.
3. If the working group finds that some or all of the apparent conflicts can only be remedied through legislative changes, it will make recommendations for such changes.
4. VDH and DPOR pledge to make available to the working group such resources as are reasonably necessary for it to carry out its charge, including, but not limited to, meeting spaces, administrative and communication assistance, and advice from legal counsel which shall be considered confidential under the attorney-client privilege.

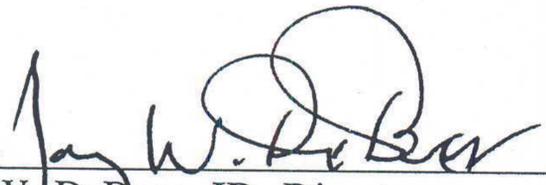
5. Members of the working group must agree not to disclose advice or opinions of counsel rendered in relation to subject matter under study.

6. In carrying out its charge, the working group is to consider the range and complexity of available and emerging onsite sewage treatment and dispersal technologies, the exigencies of VDH's permitting and regulatory programs, the need to serve the citizens of the Commonwealth with safe, economical, reasonable, and cost-effective onsite and alternative discharging sewage treatment and disposal solutions, and such other factors as it deems necessary. In making recommendations for legislation, the working group is to consider the flexibility needed to allow for rapid changes in technology in the onsite and alternative discharging sewage programs.

7. The working group will establish its own meeting schedules as well as its operating guidelines. It will finish its work and provide written findings and recommendations to the State Health Commissioner and DPOR's Director as soon as practicable, but no later than December 1, 2007.

This Memorandum of Agreement will be effective upon the date that it is signed by both parties indicated below. This Agreement will remain in effect until December 1, 2007, or until the parties hereto enter into another Memorandum of Agreement. This Agreement may be cancelled by mutual written agreement of the parties. Furthermore, any amendments, deletions, or additions to this Agreement may be made by letter signed by the Director of Department of Professional and Occupational Regulation and the Commissioner of the Virginia Department of Health.

The undersigned agree to the Conditions of this Agreement.



Jay W. DeBoer, JD, Director
Virginia Department of Professional &
Occupational Regulation

12/8/2006
Date



Robert B. Stroube, MD, MPH,
State Health Commissioner

12/19/2006
Date