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:

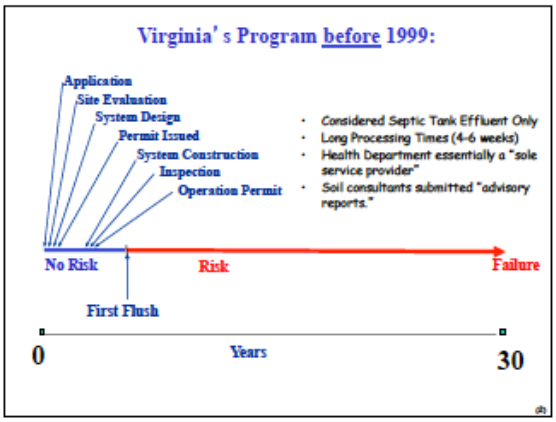
Tanya Denckla Cobb
Frank Dukes
Kelly Wilder
Jason Knickmeyer

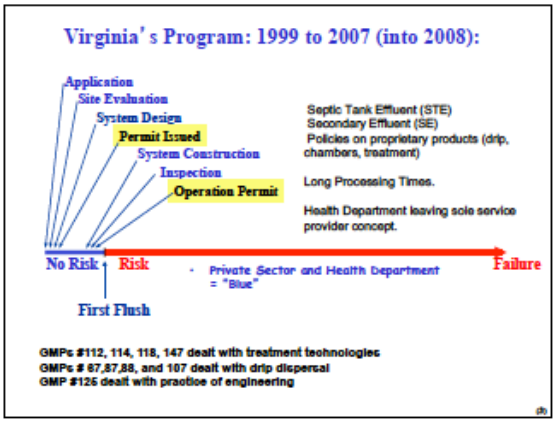
Meeting Observers:

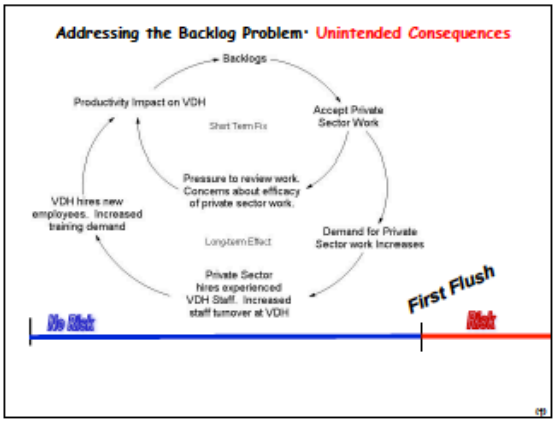
Tim Wood
John Ewing
Sarah Lewis
Steve Simpson
Bob Marshal
Alan Brewer
Jack McQuellen
Mike Crown
Shaun Wiggin
Danna Revis
Candy McGarry
Lance Gregory
David Tiller
Carry Atwood
Marcia Degen
Ololade Olakanmi
Tim Wood
Lenore Dukes

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

(7)

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

(8)

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

(9)

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

(10)

Important Legislation: 2011

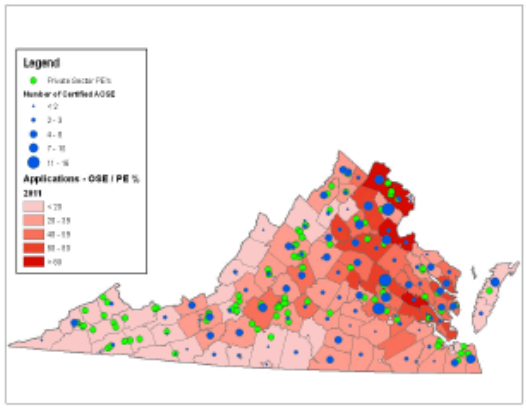
- HB 2185
  - Every application include OSE/PE Report
  - Left in committee pending a study
  - Stakeholder interview process completed
  - Report accepted by General Assembly
    - » 10 meetings around the Commonwealth from September 9, 2011 through October 6, 2011.
    - » Online survey and telephone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

(11)

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

(12)



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.

(13)

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

(15)

(16)

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.

(17)

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: 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.

(18)

Health Department Funding: Key Concepts

- § 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.

(219)

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.)

(220)

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

(221)

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.

(222)

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

(223)

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

	# Application	# Approved	# Admin Denial	# Site Denial	# Conditional	# Being Processed	# Other	# AOSE App	# AOSE Admin Denial	# AOSE Site Denial	# PE Plan
Component Replacement Permit	305	288	8	3	6	12	12	18	4	0	3
Construction Permit	6655	5451	395	229	319	299	113	2903	65	34	907
Courtesy Review	121	1	0	0	0	120	0	83	0	0	1
Expansion Permit	243	194	15	11	32	15	6	70	3	0	28
Legacy Documentation	376	280	2	1	1	5	0	1	0	0	3
Modification Permit	294	217	6	4	49	39	6	55	3	0	23
Multi-Lot Certification Letter	27	12	0	2	0	13	0	15	0	2	1
Repair Permit	3957	2132	164	125	54	255	112	520	17	9	147
Safe; adequate and proper evaluation	1024	1064	46	109	9	149	38	3	0	0	4
Sewage Disposal Discharge System	90	34	7	0	1	20	2	5	1	0	32
Single Lot Certification Letter	1118	791	101	41	0	117	36	600	27	9	19
Subdivision	302	282	4	3	0	11	1	297	4	3	3
Totals	14112	10724	750	528	471	1055	318	4569	144	57	1173

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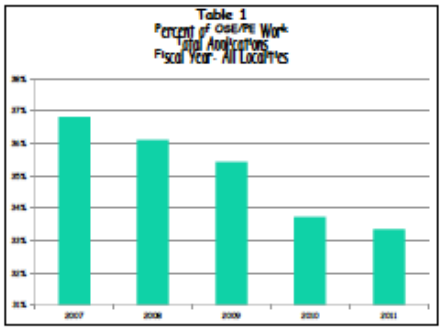

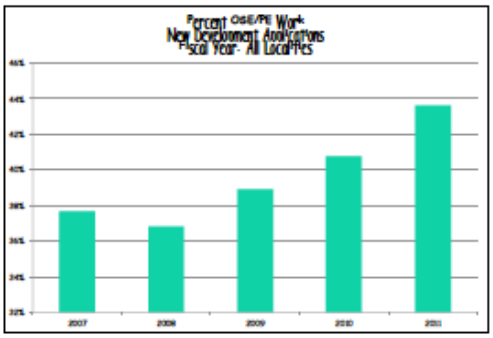

Cooperative Agreements

- 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 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, 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.
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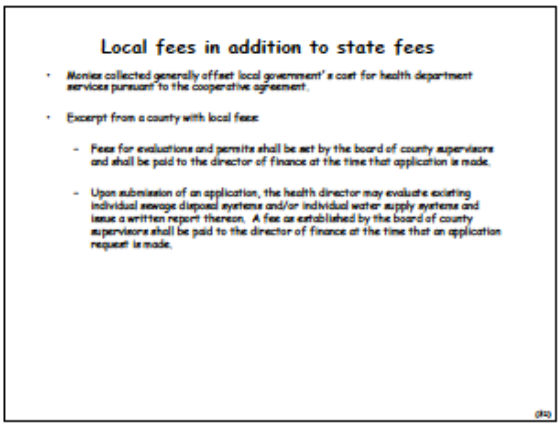
  - Fees not wholly based on the cost to deliver the actual service
  - Filling in lost general fund revenue
  - New fees established in the budget bill

State Fees

Service	Fee
Construction permit with no supporting PE/OSE work ("Bare application")	
System ≤ 1,000 GPD	$425.00
System > 1,000 GPD	$1,400.00
Construction permit with supporting PE/OSE work included	
System ≤ 1,000 GPD	$225.00
System > 1,000 GPD	$1,400.00
Certification letter with no supporting PE/OSE work ("Bare application")	
System ≤ 1,000 GPD	$350.00
System > 1,000 GPD	$1,400.00
Certification letter with supporting PE/OSE 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
        - 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.
- 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 art 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 Assemble
        - 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 the 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 und 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 pat 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 coast to deliver the actual service
        - Filling in lost fund revenue
        - Ne 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 supervisor s 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.