

## 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

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#### 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.

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#### Welcome Back & Introductions

Thirty-two people met at the English Inn in Charlottesville, Virginia, on September 26<sup>th</sup> 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:

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

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- 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.

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

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- 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-serviced 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

<b>VDH SHIFT Stakeholder Advisory Committee Meeting</b>	<b>1</b>
<b>DRAFT RECOMMENDATIONS</b>	<b>2</b>
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. <b><u>ROLES AND RESPONSIBILITIES</u></b>	<b>9 [1]</b>

#### Paragraph 9 [1]

**bob marshall:** The SHIFT Committee needs to further relate roles and responsibilities with identification of potential conflicts of interest.

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.

  
Sep 25, 2013

REPLY

A. <b>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?</b>	<b>10 [3]</b>
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#### Paragraph 10 [3]

**Jeff Walker:** Direct design services are not one of the 10 Essential Services of Public Health

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.

  
Sep 23, 2013

REPLY

**Jeff Walker:** Necessities for improving private sector participation have been identified by VDH administrators. In an address to Heardland Institute prior to licensure Dwayne identified the following issues:

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.

  
Sep 23, 2013

REPLY

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

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**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)...

  
Sep 24, 2013

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.

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

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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.

  
Sep 25, 2013

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.

  
Sep 23, 2013

REPLY

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**Jeff Walker:** agree with Bill

  
Sep 23, 2013

REPLY

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?

  
Sep 20, 2013

REPLY

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

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

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

- 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]

<b>Dr. Charles Devine:</b> Designer should inspect and certify the system was installed in accordance with the design.  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". REPLY	 Sep 24, 2013
<b>Jeff Walker:</b> Agree w/ Dr. Devine; this does not require any changes to policy or regulation. REPLY	 Sep 24, 2013

- 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]

<b>Erik Johnston:</b> why require periodic inspections? Who will pay for this? REPLY	 Sep 20, 2013
<b>Sandra Gentry:</b> Alternative system owners pay for inspections  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. REPLY	 Sep 20, 2013
<b>Bill Sledjeski:</b> Agree  All systems should be inspected periodically based on complexity. The cost should be borne by the system owner. REPLY	 Sep 23, 2013

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

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**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

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

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- 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]

<p><b>Bill Sledjeski:</b> 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>REPLY</p>	 <p>Sep 23, 2013</p>
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- c. VDH should conduct level 2 inspections when requested by the designer. **28** [3]

**Paragraph 28** [3]

<p><b>Erik Johnston:</b> If they request, then designers should pay for these inspections.</p> <p>REPLY</p>	 <p>Sep 20, 2013</p>
<p><b>Jeff Walker:</b> the fees paid by consumers of design services currently cover these inspections. Changes may be made under legislation</p> <p>REPLY</p>	 <p>Sep 23, 2013</p>
<p><b>Bill Sledjeski:</b> Disagree</p> <p>All inspections should be included in VDH oversight policy which should be covered in application/design review fees.</p> <p>REPLY</p>	 <p>Sep 23, 2013</p>

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]

<p><b>Jeff Walker:</b> Not my issue, however I interpret this to be a continuation of "courtesy review"</p> <p>REPLY</p>	 <p>Sep 23, 2013</p>
<p><b>Jeff Walker:</b> 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>REPLY</p>	 <p>Sep 24, 2013</p>
<p><b>Jeff Walker:</b> 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>	 <p>Sep 24, 2013</p>

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

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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.  
REPLY  Sep 22, 2013

**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.  
REPLY  Sep 23, 2013

**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.  
REPLY  Sep 23, 2013

**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.  
REPLY  Oct 9, 2013

- 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]**

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

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**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

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

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systems are installed in accordance with regulations and the design.

REPLY  Sep 23, 2013

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**Bill Sledjeski:** Agree

REPLY  Sep 23, 2013

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**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

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**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

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

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

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REPLY  Sep 23, 2013

Paragraph 38, Sentence 1 [4]

**Jeff Walker:** How does this fit into the 10 essential services of public health?  Sep 23, 2013

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

**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.  Sep 23, 2013

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

**Jeff Walker:** Essential services may be reviewed here:  
[http://en.wikipedia.org/wiki/10\\_Essential\\_Public\\_Health\\_Services](http://en.wikipedia.org/wiki/10_Essential_Public_Health_Services)  Sep 23, 2013

REPLY

**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?  Sep 23, 2013

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

i. VDH should never design systems, standard or alternative. **Legislation** 39 [5]

Paragraph 39 [5]

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

REPLY

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

REPLY

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

REPLY

**Jeff Walker:** COI was the VDH's purpose in recusing itself from advanced system design.  Sep 24, 2013

Jim, what has changed?  
VDH is still providing review and approval of proprietary systems. Can the same agency which approves also "pick favorites?"

REPLY

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

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				<p><b>Jim Bowles:</b> I didn't say that anything had changed. I'm asking Bill for his reasons.</p> <p style="text-align: center;">REPLY</p>	 <small>Sep 24, 2013</small>
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- ii. VDH should be able to design alternative systems in repair/emergency situations (See SECTION X) **Policy** **40** [5]

**Paragraph 40** [5]

				<p><b>Erik Johnston:</b> 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. <span style="color: red;">[Edited]</span></p> <p style="text-align: center;">REPLY</p>	 <small>Sep 20, 2013</small>
				<p><b>Jeff Walker:</b> current policy prohibits due to conflict of approving vs. specifying proprietary products. How can the VDH avoid this conflict?</p> <p style="text-align: center;">REPLY</p>	 <small>Sep 23, 2013</small>
				<p><b>Bill Sledjeski:</b> Disagree as a VDH standard of practice only as an exception for certain conditions. VDH should not design alternative systems..</p> <p style="text-align: center;">REPLY</p>	 <small>Sep 23, 2013</small>
				<p><b>Jeff Walker:</b> Designer must show license; courts and policy require pump calculations and other specifications be performed in recognition of duty to client.</p> <p>When will VDH staff comply with the license requirement for designs to bear signature and address of PE/OSE?</p> <p style="text-align: center;">REPLY</p>	 <small>Sep 24, 2013</small>

				<p><b>bob marshall:</b> 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). <b>Tags:</b> administrative code</p> <p style="text-align: center;">REPLY</p>	 <small>Sep 25, 2013</small>
<p>12VAC5-610-160. Emergency order or rule.</p> <p>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.</p> <p>Statutory Authority</p> <p>§§ 32.1-12 and 32.1-164 of the Code of Virginia.</p>					

- 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. **41** [4]
- [1] [6] Not sure

**Paragraph 41** [4]

				<p><b>Erik Johnston:</b> I oppose these limitations. I support VDH maintaining its ability to provide direct services.</p> <p style="text-align: center;">REPLY</p>	 <small>Sep 20, 2013</small>
				<p><b>Bill Sledjeski:</b> Disagree</p> <p style="text-align: center;">REPLY</p>	 <small>Sep 23, 2013</small>

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

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**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]

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

## 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**

## 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"?**

## 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 WoooSop (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]

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

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issue.

Paragraph 47 [2]

<b>Erik Johnston:</b> the extension idea in number 46 is better because it would cost less to implement.	 Sep 20, 2013
REPLY	
<b>Sandra Gentry:</b> 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.	 Sep 20, 2013
REPLY	

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]

<b>Jeff Walker:</b> There is no Constitutional right to sewage services, how is this a responsibility of Government?	 Sep 23, 2013
REPLY	
<b>Jim Bowles:</b> Provision of services, especially in the case of a failing system, is a public health issue. Protection of public health is a government issue.	 Sep 24, 2013
There is no constitutional right to immunizations, but may be provided by the health department to protect the general public from disease.	
REPLY	
<b>bob marshall:</b> This subcharge can not ignore Implementation of the Onsite Sewage Quality Assurance Program October 17, 2007	 Sep 25, 2013
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.	
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."	
REPLY	

- 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]

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

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

---

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]

<p><b>Jeff Walker:</b> Recent SHADAC exchange revealed there are few “checks &amp; balances” DEq expected notice of waivers, but has not received such. Significant issue upon repairs which introduce sewage beneath the water table.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	  <small>Sep 23, 2013</small>
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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]

<p><b>Erik Johnston:</b> 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.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	 <small>Sep 20, 2013</small>
<p><b>Jeff Walker:</b> 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?</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	  <small>Sep 23, 2013</small>
<p><b>Bill Stedjeski:</b> Or under the direct supervision of the licensee either VDH or designer with a licensee sign off.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	 <small>Sep 23, 2013</small>
<p><b>Jeff Walker:</b> All OSE licensees have been under the same law since July 2009.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	  <small>Sep 23, 2013</small>
<p><b>Jim Bowles:</b> 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.</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	 <small>Sep 24, 2013</small>
<p><b>Jeff Walker:</b> Jim Bowles; on Thursday please bring one VDH design which bears an OSE signature which documents compliance with this “policy.”</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	  <small>Sep 24, 2013</small>
<p><b>Jeff Walker:</b> Indeed the engineering code applies and requires our work be identified, specifically bearing name &amp; address of the designer. And invoking by authority, either a PE license, or exemption to the license (54.1-402.A.11).</p> <p style="text-align: left; margin-top: 5px;">REPLY</p>	  <small>Sep 24, 2013</small>

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

---

**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

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

---

**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 IIIB 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:
- 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

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

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

REPLY



- 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



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

REPLY



- 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



- 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



- 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]

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

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]

**Jeff Walker:** To paraphrase Mark Coartney- no bonds are currently required under DPOR regulation. banks and financial institutions, contractors and developers sometimes require bonds etc.  Sep 23, 2013  
REPLY

**Mark Courtney:** To clarify - the Board for Contractors does not require a bond for licensure.  Sep 24, 2013  
REPLY

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

## Paragraph 70 [1]

**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.  Sep 23, 2013  
REPLY

- 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]

**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.  Sep 23, 2013  
REPLY

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

## Paragraph 72 [1]

**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.  Sep 19, 2013  
REPLY

- 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. Complaints about licensed occupations are a DPOR issue. [1] Complaints about sewage facilities (or lack thereof) are a VDH issue.** 74 [2]

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

---

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)...

  
Sep 24, 2013

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.

  
Sep 23, 2013

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

  
Sep 20, 2013

REPLY

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

  
Sep 23, 2013

REPLY

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

  
Sep 23, 2013

REPLY

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

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

## 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

VAPSS



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.



Oct 22, 2013

REPLY

- 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

VAPSS



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

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

---

**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.

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

---

<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 style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 23, 2013</small>
<p><b>Bill Sledjeski:</b> No to a website developed by VDH for this purpose</p> <p style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 23, 2013</small>
<p><b>David Lentz:</b> This appears to be a conflict of interest for VDH.</p> <p style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 24, 2013</small>

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]

<p><b>Bill Sledjeski:</b> No to this idea.</p> <p style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 23, 2013</small>
<p><b>Jeff Walker:</b> Absolutely not!</p> <p style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 23, 2013</small>

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

**Paragraph 90** [3]

<p><b>Jeff Walker:</b> 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 style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 23, 2013</small>
<p><b>Jim Bowles:</b> 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 style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 24, 2013</small>
<p><b>Jeff Walker:</b> Requires legislative action</p> <p style="text-align: right;"><small>REPLY</small></p>	 <small>Sep 24, 2013</small>

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]

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

---

Paragraph 92 [2]

**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.   
Sep 20, 2013

REPLY

**Jeff Walker:** I share this concern, there are already deficiencies in reporting financial relationships w/in VDH   
Sep 23, 2013

REPLY

7. SUBCHARGE 1A7: Evaluate options for responding to repair applications.

93 [1]

Paragraph 93 [1]

**Jeff Walker:** Repairs must also meet the standards for engineering and design, including bearing OSE or PE signature.   
[Edited]  
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?  
Sep 23, 2013

REPLY

- 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]

**Jeff Walker:** Forensic study, site and soil interpretation; and legal expertise in determining fault are public duties for assessing eligibility for repair under subsidy.   
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.  
Sep 23, 2013

REPLY

- 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]

**Jeff Walker:** Agency staff have not been trained or encouraged to identify straight, or crooked pipes.   
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.  
Sep 23, 2013

REPLY

- i. VDH should establish a referral service for the homeowner with information on private sector providers (see section 1B). **Need more info** 96

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

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- ii. Homeowners that meet a "means-test" (income threshold) should have access to: [Legislation](#) 97 [2]

Paragraph 97 [2]

<p><b>Jeff Walker:</b> 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><b>Jim Bowles:</b> 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><b>Erik Johnston:</b> 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
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- 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]

<p><b>Jeff Walker:</b> All design for improvements to real property in the Commonwealth is performed by licensed professionals under contract. 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
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- 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><b>Erik Johnston:</b> 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
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- 2. **SUBCHARGE 1B2: Investigate ways to encourage or increase private sector input for work with repairs.** 103 [2]

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

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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.



Sep 24, 2013

REPLY

**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

Sep 25, 2013

"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

- 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.



Sep 20, 2013

REPLY

**Bill Sledjeski:** agree



Sep 23, 2013

REPLY

**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.

Sep 23, 2013

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

- 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.



Sep 24, 2013

REPLY

**Jeff Walker:** Agree, the OSE's training knowledge and skills are sufficient to protect the public interests, while

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

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<p>reducing the cost of services.</p> <p style="text-align: center; color: gray;">REPLY</p>	  Sep 25, 2013
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- 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]**

<p><b>Erik Johnston:</b> 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. <span style="color: red;">[Edited]</span></p> <p style="text-align: center; color: gray;">REPLY</p>	 Sep 20, 2013
<p><b>Jeff Walker:</b> Private sector is only viable in markets with greater impediments to service than cost.</p> <p>impediments include:                  local ordinances or policies,                  restrictions                  time or "backlog"                  qualifications of personnel                  ability to waive regulations or requirements</p> <p style="text-align: center; color: gray;">REPLY</p>	  Sep 23, 2013
<p><b>Jeff Walker:</b> Cost of services is properly borne by the beneficiary.</p> <p>quality of services are a benefit to neighbors and natural resources- the public, hence the requirement for licensure, and oversight.</p> <p style="text-align: center; color: gray;">REPLY</p>	  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]**

<p><b>Erik Johnston:</b> 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.</p> <p style="text-align: center; color: gray;">REPLY</p>	 Sep 20, 2013
<p><b>Jeff Walker:</b> Currently VDH services do not comply with the OSE or PE law</p> <p>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.</p> <p style="text-align: center; color: gray;">REPLY</p>	  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]

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

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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 listserv.

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

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

- a. A statutory waiver would be needed to allow for lifetime repairs of septic systems, regardless of the soil site conditions, and with 123 certain conditions attached to property transfers. [Need more info](#)

B. CHARGE 2B: How should change be accomplished to minimize unintended consequences and negative impacts? 124 [1]

Paragraph 124 [1]

**Jeff Walker:** There is no basis for VDH managing competition

Only market based solutions will effect change, homeowners select services based upon price, therefore the subsidy is suspected as the main driver of competition.

REPLY



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 126 [3] 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](#)

Paragraph 126 [3]

**Erik Johnston:** I oppose phased sunset transition dates.

REPLY



Sep 20, 2013

Paragraph 126, Sentence 1 [2]

**Sandra Gentry:** If private sector only gets a small piece of the pie at a time, they may not move into underserved areas.

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.

REPLY



Sep 20, 2013

**Jeff Walker:** Sandra is correct, markets only develop with stability and fair competition.

REPLY



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 128 [2] longer lead time will allow a supply of providers to develop. [4] [Need more info](#)

Paragraph 128 [2]

**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.

REPLY



Sep 20, 2013

**Jeff Walker:** Evidently VDH can not sustain the subsidy or the staff required to continue this program without new funding.



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

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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.

REPLY  Sep 20, 2013

**Jeff Walker:** Homeowners who benefit from subsidy are only 0.1% of electorate. Presumably this is not sufficient to maintain support for taxpayer support.

REPLY  Sep 23, 2013

**Jim Bowles:** Jeff, would show how you calculated this statistic? "Homeowners who benefit from subsidy are only 0.1% of electorate"

REPLY  Sep 25, 2013

**Jeff Walker:** Approximately 14,000 permits/year is the basis; with 3,854,489 ballots cast in VA November 2012.

the percentage of the electorate who benefit from subsidies to the onsite program approaches 0.36%  
Forgive me, I exaggerated the actual impact but still can make the point.

REPLY  Sep 25, 2013

**Paragraph 129, Sentence 1 [1]**

**Jeff Walker:** Legislation will be required to change fees.

REPLY  Sep 23, 2013

- 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.

REPLY  Sep 20, 2013

**Paragraph 130, Sentence 2 [1]**

**Sandra Gentry:** See comment at Paragraph 126 Sentence 1.

REPLY  Sep 20, 2013

- C. **CHARGE 2C: Describe other strategies, data, information, or detail as developed through or deemed necessary by the SHIFT stakeholder process.** 131

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

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.  
REPLY  Sep 23, 2013

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**Jim Bowles:** Bill, I'm really interested in your thoughts about why this is not practical.  
REPLY  Sep 24, 2013

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**Jeff Walker:** I support a forms based solution, but in interim could use PDF to submit design and inspection reports.  
DEQ has an interesting platform.  
REPLY  Sep 24, 2013

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**Jeff Walker:** VENIS is a humongous dysfunctional failure, this might be wherein Bill suggests "impractical"  
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  Sep 24, 2013

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**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]

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

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<p><b>Erik Johnston:</b> 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.</p> <p style="text-align: right;"> Sep 20, 2013</p> <p style="text-align: left;">REPLY</p>
<p><b>Jeff Walker:</b> Current policy is an unfunded mandate, changes to increase private sector participation takes services off General and local fund columns.</p> <p style="text-align: right;"> Sep 23, 2013</p> <p style="text-align: left;">REPLY</p>
<p><b>Dr. Charles Devine:</b> Localities do pay through the local cooperative budget to support the cost of providing services not fully paid for by fees.</p> <p style="text-align: right;"> Sep 24, 2013</p> <p style="text-align: left;">REPLY</p>
<p><b>Jeff Walker:</b> LGA is a funding mechanism; many counties expect services in support of planning or permitting beyond BoH requirements.</p> <p>I'm interested in learning more about funding and services, this was a topic at SHADAC.</p> <p style="text-align: right;"> Sep 24, 2013</p> <p style="text-align: left;">REPLY</p>

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]

<p><b>Bill Siedjeski:</b> Minimal to all.</p> <p>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.</p> <p style="text-align: right;"> Sep 23, 2013</p> <p style="text-align: left;">REPLY</p>
<p><b>Jeff Walker:</b> Consider sewer connection fees, ranging from \$500 to &gt;\$7000 onsite can be a more effective option.</p> <p>Data may be found at: <a href="http://www.daa.com/publications/dashboard/">http://www.daa.com/publications/dashboard/</a></p> <p>For example look at Berryville; Connection fee with Capital recover fee exceeds \$25k</p> <p style="text-align: right;"> Sep 23, 2013</p> <p style="text-align: left;">REPLY</p>

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]

<p><b>Erik Johnston:</b> 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.</p> <p style="text-align: right;"> Sep 20, 2013</p> <p style="text-align: left;">REPLY</p>
<p><b>Jeff Walker:</b> Disagree; the cost belongs to those that benefit, not the tax payer.</p> <p style="text-align: right;"> Sep 23, 2013</p> <p style="text-align: left;">REPLY</p>

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

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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]

**Bill Sledjeski:** Disagree

REPLY

  
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]

**Bill Sledjeski:** Supply and Demand

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

REPLY

  
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]

**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.

REPLY

  
Sep 20, 2013

**Bill Sledjeski:** Agree

Fee structures may change but I see no reason why funding should change

REPLY

  
Sep 23, 2013

**Jeff Walker:** Agree, fees vary by locality and reflect local requirements. [\[Edited\]](#)

Fees should recover costs of services.

REPLY

  
Sep 24, 2013

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

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- 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]**

<p><b>Bill Sledjeski:</b> Not Likely</p> <p>Reduced time required for processing bare application evaluations and designs should equal lower VDH cost.</p> <p style="text-align: right;"> Sep 23, 2013</p> <p style="text-align: left;">REPLY</p>
<p><b>Jeff Walker:</b> 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 style="text-align: right;"> Sep 23, 2013</p> <p style="text-align: left;">REPLY</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]**

<p><b>Erik Johnston:</b> Local flexibility is good idea, but locality must be a driver in any local policy changes.</p> <p style="text-align: right;"> Sep 20, 2013</p> <p style="text-align: left;">REPLY</p>
<p><b>Jeff Walker:</b> reviewing privatization by District we can understand that localities have suppressed private designers by</p>

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

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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

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**Bill Sledjeski:** Isn't this the aim of SHIFT?  
REPLY

  
 Sep 23, 2013

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**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+

  
 Sep 23, 2013

REPLY

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**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

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

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in this issue.  
REPLY

  
Sep 23, 2013

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**Jeff Walker:** I second Bill's comment  
REPLY

  
Sep 23, 2013

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**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

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**Jeff Walker:** Thanks for re-awakening this forum. Introducing a master Onsite license would alleviate/remedy. shortage of professionals

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

with allied experience. [\[Edited\]](#)

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.

REPLY

**VAPSS**  
  
Oct 10, 2013

**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.

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.

REPLY

**VAPSS**  
  
Oct 10, 2013

**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.

REPLY

**VAPSS**  
  
Oct 10, 2013

**John Ewing:** Lecture CEU's a requirement

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.

REPLY

  
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]

**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.

REPLY

**Bill Sledjeski:** Agree

REPLY

**Jeff Walker:** Hamm was a more comprehensive study than RD32, which is seriously flawed and unduly influenced by anonymous and vested interests.

REPLY

**VAPSS**  
  
Sep 20, 2013

  
Sep 23, 2013

**VAPSS**  
  
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).