



COMMONWEALTH of VIRGINIA

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December 1, 2014

The Honorable Robert D. Orrock, Sr.
P.O. Box 458
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Dear Delegate Orrock:

This is in reply to your recent email about implementing consensus recommendations from the Safety and Health in Facilitating a Transition (SHIFT) stakeholder process to implement goals of HB409, which was introduced during the 2014 General Assembly session. The Virginia Department of Health's (VDH) understanding is that the Health, Welfare and Institutions Committee would like for the seven consensus SHIFT recommendations to be used to (1) develop a strategy for achieving the goals of HB409; (2) develop a prompt and practicable implementation timeline; and (3) communicate strategy and timelines by December 1, 2014. Thank you for providing me an opportunity to explain what VDH has done to date with respect to SHIFT, what is currently being accomplished, and what it sees in terms of next steps.

The SHIFT process developed seven consensus recommendations, all but one of which VDH will implement by January 1, 2015, as an ongoing business process. VDH's strategy is to implement all consensus recommendations, and continue the hard work of developing new ideas and approaches on which stakeholders can agree.

In the SHIFT report executive summary, two overarching themes were identified. First, VDH should continue providing regulatory oversight¹. Second, VDH should also encourage private sector participation. The remaining consensus recommendations were considered important strategies for reaching the overarching goals. I want to highlight an important consideration regarding the consensus recommendations:

Core differences did emerge during the [SHIFT] process. Some of those who proposed that the VDH should cease all new soil evaluation and septic design beginning in 2014 continued to advocate for this all the way through the process.

¹ The SHIFT report can be viewed in its entirety at www.vdh.virginia.gov/EnvironmentalHealth/Onsite/SHIFT/links.htm.

Some moved away from this position as they learned more from other stakeholders. On the other hand, some of those who may have been uncertain about the degree to which they supported increased private sector participation became more certain through the process that they wanted to retain the VDH as a service provider.

While committee members often expressed agreement on big principles – such as the goal to increase private sector participation – specific proposals to move these big ideas forward often failed to gain sufficient traction because of core differences. A number of ideas were agreed to in principle but ended in impasse about specific actions the VDH should take to enact those principles. It was these core differences, ultimately, that led to the conclusion by a joint consultation with VDH and the planning committee, that a true impasse had been reached following the last meeting on October 31 [2013] and that further in-person meetings of the committee would not be productive.

Stakeholder differences are profound and some—primarily those who work in the design community—are strongly opposed to how VDH implements the onsite sewage program. Private sector service providers generally believe VDH is unfairly and unnecessarily providing sewage system designs and soil evaluations, taking away work from the private sector. In contrast, many rural communities, local governments, sewage system installers, environmental groups, those who serve low and moderate income populations, and homebuilders in rural areas worry prices will substantially increase if VDH were to immediately stop providing evaluation and design services.

Core differences mean there is not a “one size fits all solution” for increasing private sector participation. VDH’s report in response to HB2185 from the 2011 General Assembly session noted, in part, the following (see executive summary):²

Survey respondents agreed on numerous topics. Virtually all agreed VDH was an essential participant in making sure public health and groundwater supplies were protected. Many observed VDH’s critical role in assuring adequate regulations and policies were in place to protect public health. Nearly every public meeting participant expressed the belief VDH should enforce requirements that protect public health. Other participants observed quality services must be provided in the private sector and that a “checks and balances” system was necessary to identify bad actors and subpar

² VDH’s complete report to the Va. General Assembly, 2012, RD 32, can be viewed at <http://leg2.state.va.us/dls/h&sdocs.nsf/4d54200d7e28716385256ec1004f3130/b758d93613af667f85257989006edacf?OpenDocument>).

performance. Public meeting participants generally felt VDH should be the non-partisan reviewer of private sector work. All seemed to understand and recognize that sewage systems and water supplies must be properly designed, installed, inspected, operated, and maintained to protect the Commonwealth's environment and health.

Despite areas of agreement, stakeholders also voiced differing ideas about the health department's role in protecting public health and the environment. Some believed VDH should provide all onsite services, including site and soil evaluations, operation and maintenance, and designs of alternative onsite sewage systems. Others thought VDH should no longer perform any direct service. Some suggested VDH should review all work submitted by the private sector as part of the checks and balances approach. Still other stakeholders thought VDH should not perform any quality assurance or quality control evaluation of private sector work. Some participants opined health department fees for services were reasonable, while others felt they were unfair and needed change. Some service providers were willing to provide free services in limited circumstances while many were unwilling to provide any pro bono service. Mutual understanding and agreement among all stakeholders regarding how the private sector could provide all services was absent.

Ultimately, the SHIFT process concluded that a voluntary, gradual, encouraged approach over time, rather than a mandated and immediate change, would better serve the Commonwealth in maximizing private sector service delivery. A voluntary, gradual, and encouraged approach over time is preferred because it avoids confusion from sudden change, and also provides ample opportunity for core differences to be explored to find agreement. While the SHIFT process recommended a gradual approach going forward, VDH requires private sector work when the applicant has one or more of the following needs:

- A sewage system that serves a business or non-residential need.
- A sewage system that disperses over 1,000 gallons per day.
- An alternative onsite sewage system that disperses treated effluent into the soil.
- An alternative discharging sewage system.
- A sewage system that requires plans from a professional engineer.
- A sewage system that is part of a new subdivision being reviewed by a local government.

The SHIFT process did not recommend that VDH back away from the above mandates. However, when SHIFT explored whether additional mandates should be implemented to other VDH application types (such as bare applications for conventional sewage systems), no agreement could be reached. Additional ideas for expanding mandates to use private sector work

failed to reach consensus and had detractors because expanding mandates would limit homeowner options. All mandated approaches considered by SHIFT were rejected; consensus could not be reached.

VDH recognizes this is a complex issue with varied opinions, beliefs, and stakeholder groups, many of whom are silent or do not have easily identified representatives (e.g., homeowners, property owners, and low-income populations). The complaints against VDH service delivery originate from a number of private sector designers; however, the issues have been with the program for more than a decade. VDH concurs that private sector participation should be increased to the maximum extent possible, while protecting public health and groundwater supplies. VDH also supports the SHIFT's consensus recommendations and is implementing the recommendations aimed at encouraging the use of private sector services. All but one of the recommendations should be implemented by January 1, 2015. The remaining recommendation, addressing quality assurance, should be completed in 2016.

Timeline to implement consensus recommendations from the SHIFT process:

Recommendation	Method to Implement	Expected Date of Implementation
1. VDH must provide regulatory oversight.	Continue to implement regulations and law. Continue to provide reviews of private sector work	This is the current reality.
2. Encourage use of the private sector.	VDH will revise agency policy, create a disclosure document, and create a website with contact information for service providers.	January 1, 2015
3. Document reviews with standard VDH forms.	VDH will revise agency policy and create standard VDH forms.	January 1, 2015
4. Require VDH staff to complete the same paperwork as the private sector.	VDH will revise agency policy and require VDH staff to complete the same work as historically expected of the private sector.	January 1, 2015
5. Require VDH staff to hold a license to perform services.	VDH requires unlicensed staff to work under the direct supervision of a licensed employee.	This is the current reality.
6. Revise Guidance Policy #51.	VDH will revise agency policy.	January 1, 2015
7. Update VDH's quality assurance policy.	VDH will revise agency policy.	January 1, 2016

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Given the significant interest in this topic, an encouraging approach will not satisfy several stakeholders. If you have additional questions or thoughts, then please contact Mr. Dwayne Roadcap, Division Director, at (804) 864-7458 or (804) 221-7335. You can also speak with Mr. Allen Knapp, Director, Office of Environmental Health Services, at (804) 864-7456.

Thank you again for giving me an opportunity to describe our strategy, timeline, and ongoing effort to implement the goals of HB409 through consensus recommendations developed from the SHIFT process.

Sincerely,


for Marissa J. Levine, MD, MPH, FAAFP
State Health Commissioner

cc: The Honorable William A. Hazel, Jr., MD

----- Original Message -----

From: borrock@bealenet.com [mailto:borrock@bealenet.com]
Sent: Thursday, September 11, 2014 01:15 PM Eastern Standard Time
To: Levine, Marissa (VDH)
Cc: delegatewebert@gmail.com <delegatewebert@gmail.com>
Subject: Hb409

Dr. Levine,

Hope that all is well and that you are enjoying the position of Commissioner. Belos is a letter that was supposed to have been sent in May, but due to an oversight, was not forwarded. If you can address the issues in question and if the Dec. time table is too short, just let me know what consideration it can receive and a general time table. Feel free to contact me with any questions.

Thanks for your attention.

Bobby Orrock

Dr. Marissa J. Levine
Commissioner, Department of Health
James Madison Building
109 Governor Street, 13th Floor
Richmond, VA 23219

Dear Dr. Levine:

I write to you as chair of the House committee on Health, Welfare and Institutions ("Committee") of the Virginia General Assembly. During the 2014 session, House Bill 409 was introduced by Delegate Michael Webert in response to a 2013 meeting held in Williamsburg between former Delegate Michael Watson, representatives of Onsite Septic Design professionals ("Stakeholders"), and representatives of the Virginia Department of Health ("VDH"). The purpose of this meeting was to address concerns regarding the VDH's performance of certain design services which Stakeholders believed should be performed by private sector companies. It is the understanding of the Committee that VDH concurred with several Stakeholder concerns and agreed to establish a workgroup to study the issue and to develop a transition strategy for applicable services.

HB 409 sought to codify that effort, establishing the following goals:

1. Identify design services currently offered by VDH that inappropriately compete with the private sector.
2. Define the role of VDH to the design of onsite septic systems to avoid inappropriate competition.
3. Develop a plan to transition applicable services from VDH to the private sector.
4. Identify any necessary legislative or regulatory changes to implement the plan.

Several days before HB 409 testimony was to be heard, the patron advised the Committee that a report prepared by the UVa Institute for Environmental Negotiation had just be delivered to him. This report detailed a series of five meetings convened by VDH and representatives of nine interest groups working under the name 'Stakeholder Advisory Committee on Safety and Health in Facilitating a Transition ("SHIFT"). Based on the information contained in the SHIFT report, it was the opinion of both Delegate Webert and former Delegate Watson that these five meetings had served to adequately identify the concerns and opinions of all participants and that the report contained sufficient information to facilitate the achievement of goals set forth in HB 409.

Accordingly, Delegate Webert requested that HB 409 be tabled pursuant to consideration that a letter be sent to VDH expressing the will of the Committee as follows:

- a) That VDH use the SHIFT report to develop a strategy for achieving all aforementioned goals;
- b) That VDH develop an prompt and practicable timeline for implementation of said strategy; and
- c) That VDH communicate its strategy and timeline to the Committee no later than December 1, 2014.

I am submitting this letter accordingly and thank you, in advance, for your efforts on this issue. Please do not hesitate to contact me for clarification of this request.