



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 50-22 Board for Contractors Regulations
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 5550 / 9204
March 18, 2021

Summary of the Proposed Amendments to Regulation

The Board for Contractors proposes to replace the existing Sewage Disposal Systems Contracting specialty in the 18 VAC 50-22 *Board for Contractors Regulations* with two new specialties: Alternative Sewage Disposal System Contracting and Conventional Sewage Disposal System Contracting.

Background

Current

The Department of Professional and Occupational Regulation (DPOR) notes that conventional and alternative onsite sewage systems are inherently different and require a different skill level to install.¹ Simply put, a conventional system uses one or more septic tanks and results in a point source discharge via a drainfield.² An alternative system uses a different approach and does not result in a point source discharge.

The current 18 VAC 50-22 *Board for Contractors Regulations* do not distinguish between conventional and alternative sewage disposal systems. This regulation currently defines “Sewage disposal systems contracting” (SDS) as “the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property.” The qualified individual of a licensed contractor holding the SDS specialty must hold a master onsite sewage system installer license, issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals

¹ See https://townhall.virginia.gov/l/GetFile.cfm?File=10\5550\9204\AgencyStatement_DPOR_9204_v1.pdf, page 2

² See <https://www.epa.gov/septic/types-septic-systems>

(WWWOSSP), in order for the company to qualify for the specialty on its license, and to legally perform SDS contracting work.

In contrast, WWWOSSP does distinguish between conventional and alternative sewage disposal systems. The 18 VAC 160-40 *Onsite Sewage System Professionals Licensing Regulations* have separate journeyman and master licenses for both conventional and alternative sewage disposal systems. However, since the Board for Contractors' current licensing approach does not differentiate between the two types of systems, a contractor whose qualified individual only had a master conventional onsite sewage system installer license, but performed alternative sewage disposal system work, would not violate the *Board for Contractors Regulations*.

Proposed

The Board for Contractors proposes to align the *Board for Contractors Regulations* with the *Onsite Sewage System Professionals Licensing Regulations* by replacing the existing SDS Contracting specialty with separate conventional and alternative specialties. Accordingly, the Board for Contractors proposes to eliminate SDS from section 18 VAC 50-22-30 *Definitions of specialty services*, and add definitions for "Conventional sewage disposal system contracting" (CDS) and "Alternative sewage disposal system contracting" (ADS). CDS would be defined as:

The service that provides for the installation, repair, improvement, or removal of a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield. The ADS specialty may also perform this work.

ADS would be defined as:

The service that provides for the installation, repair, improvement, or removal of a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge. No other classification or specialty service provides this function.

Also, in sections 18 VAC 50-22-40 *Requirements for a Class C license*, 18VAC50-22-50 *Requirements for a Class B license*, and 18VAC50-22-60 *Requirements for a Class A license*, the Board for Contractors proposes to specify that the firm's qualified individual:

Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations, a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.

Thus, under the proposed *Board for Contractors Regulations*, the qualified individual must have a master alternative onsite sewage system installer license in order for a contractor to perform alternative sewage disposal system work.

Estimated Benefits and Costs

An improperly installed or maintained sewage disposal system can potentially harm public health and the environment. The most serious documented problems involve contamination of surface waters and ground water with disease-causing pathogens and nitrates. Other problems include excessive nitrogen discharges to sensitive coastal waters and phosphorus pollution of inland surface waters, which increases algal growth and lowers dissolved oxygen levels. Contamination of important shellfish beds and swimming beaches by pathogens is a concern in some coastal regions.³

According to DPOR, the examination required for the master conventional onsite sewage system installer license does not cover the more complex attributes of alternative onsite sewage systems. As indicated above, under the current regulation a contractor whose qualified individual only has a master conventional onsite sewage system installer license would not violate the *Board for Contractors Regulations* for performing alternative sewage disposal system work.

The proposal to only permit contractors with a qualified individual who has obtained a master alternative onsite sewage system installer license to conduct alternative sewage disposal system contracting would likely reduce the frequency that alternative sewage disposal systems are improperly installed or serviced. In order to obtain a master alternative onsite sewage system installer license, the applicant must demonstrate extensive subject-specific knowledge of alternative systems through passing the master alternative onsite sewage system installer examination. Thus, by limiting alternative onsite sewage system work to those firms with a qualified individual who has demonstrated sufficient knowledge through exam, the proposal would likely be beneficial for public health and the environment.

Contractors that already have a qualified individual with a master alternative onsite sewage system installer license would, initially at least, benefit through reduced competition for alternative sewage disposal system work from firms' whose qualified individual only has a

³ Source: United States Environmental Protection Agency: <https://www.epa.gov/septic/septic-systems-overview>

master conventional onsite sewage system installer license. The latter firms would be worse off in that they would no longer be permitted to offer alternative sewage disposal system services, at least until their qualified individual has earned the master alternative onsite sewage system installer license or they hire someone who already possesses the license.

In order to obtain the master alternative onsite sewage system installer license, the applicant must: pay the exam fee (currently \$80), pass the examination, have sufficient experience,⁴ potentially receive 20 hours of training,⁵ and fill out the application and pay the \$100 application fee. Under the proposed *Board for Contractors Regulations*, the contractor would pay a \$110 application fee for ADS specialty designation.

Businesses and Other Entities Affected

The proposed amendments affect the 494 licensed contractors with the SDS specialty, people who hire sewage disposal systems contractors, and the general public in that public health and the environment may be affected. It is not known how many of the 494 licensed contractors with the SDS specialty do not have a qualified individual with a master alternative onsite sewage system installer license, but since there are only 279 master alternative installers licensed by WWOOSSP, at least 215 of these firms would no longer be able to do alternative sewage disposal system work without violating *the Board for Contractors Regulations*; that is until their qualified individual has earned the master alternative onsite sewage system installer license or they hire someone who already possesses the license.⁶

Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since there would likely be, initially at least, net reduced revenue for some contractors, an adverse impact is indicated.

⁴ The amount of required experience depends on the individual's circumstance. See <https://law.lis.virginia.gov/admincode/title18/agency160/chapter40/section220/>

⁵ Whether or not the 20 hours of training is required, depends on the individual's circumstance. See <https://law.lis.virginia.gov/admincode/title18/agency160/chapter40/section220/>. Free training is available through a joint Virginia Tech-Virginia Department of Health program. See <https://www.cpe.vt.edu/waww/>

⁶ Data source: DPOR

Small Businesses⁷ Affected:Types and Estimated Number of Small Businesses Affected

The proposed amendments potentially affect the 494 licensed contractors with the SDS specialty. DPOR believes most of the 494 licensed contractors with the SDS specialty would qualify as small businesses.

Costs and Other Effects

As described above, the proposal would likely result in increased business for small contractors whose qualified individual has a master alternative onsite sewage system installer license, and reduced business for small contractors whose qualified individual does not.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁸ Affected⁹

The proposed amendments apply statewide. No localities are known to be disproportionately affected. The proposal does not substantively introduce costs for local governments.

Projected Impact on Employment

The proposed amendment is unlikely to substantively affect total employment.

Effects on the Use and Value of Private Property

As a consequence of the proposal, the value of contractors whose qualified individual has a master alternative onsite sewage system installer license may increase due to likely increased demand for their services; and the value of contractors whose qualified individual does not have a master alternative onsite sewage system installer license may decrease due to likely decreased demand for their services. The proposal would not likely substantively affect real estate development costs.

⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁸ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.