



Proposed Regulation Agency Background Document

Agency name	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Virginia Administrative Code (VAC) citation	18VAC160-20
Regulation title	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations
Action title	Regulatory Review
Date this document prepared	August 8, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The current regulations require an applicant for a conventional onsite sewage system installer license who is applying for waiver of the examination to provide documentation of experience from a list of specific professionals. The proposed amendment will eliminate the need to provide documentation by specific professionals as currently required by 18VAC160-20-97.C.2.a, thereby allowing more latitude to consider applicants that have the required experience but have not worked with one of the specified professionals.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

No acronyms or technical terms were identified that were not defined in the "Definitions" section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

§ 54.1-201.5 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board."

§ 54.1-2301 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>) provides the authority for the Board to promulgate regulations for the licensure of onsite sewage system professionals, waterworks operators, and wastewater works operators. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

In response to the Governor's Regulatory Reform initiative, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals reviewed its current regulations to identify, amend or repeal any regulations that are unnecessary or no longer in use and reduce unnecessary regulatory burdens on regulated groups.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

As an entry requirement for licensure as a conventional onsite sewage system installer, applicants who qualify for the conventional onsite sewage system installer exam waiver must demonstrate active engagement in performing the duties of a conventional onsite sewage system installer. The proposed amendment will eliminate the need to provide documentation by specific professionals as currently required at 18VAC160-20-97.C.2.a, thereby allowing more latitude to consider applicants that have the required experience but have not worked with one of the specified professionals.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

-
- 1.) The primary advantage of the proposal is that it allows more individuals who have the required experience to perform the services of a conventional onsite sewage system installer. This provides a larger pool of qualified individuals from which a consumer can select when hiring a conventional onsite sewage system installer.
 - 2.) The primary advantage to the agency, which ultimately is an advantage to the Board's regulants, is that individuals who apply for a conventional onsite sewage system installer with exam waiver currently would have to go through the administrative process to have their applications considered if one of the specified professionals could not verify their experience. This change will eliminate the need for, and costs associated with, a hearing to consider otherwise compliant applications.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no particularly affected localities.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond Virginia 23233; email: WaterWasteOper@dpor.virginia.gov; fax 866-350-5354. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The regulation change will affect exam waiver applicants for the conventional onsite sewage system installer license.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 200 applicants annually.</p>
<p>Benefits expected as a result of this regulatory proposal.</p>	<p>The proposed amendment will eliminate the need to provide documentation by specific professionals as currently required by 18VAC160-20-97.C.2.a, thereby allowing more latitude to consider applicants that have the required experience but have not worked with one of the specified professionals.</p>
<p>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</p>	<p>a) Fund: NGF (0900) Program/Service Area: 560 46</p> <p>b) One-Time: No one-time costs are expected as a result of this regulatory change.</p>

	Ongoing: No ongoing costs are expected as a result of this regulatory change.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	No change anticipated.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	There are no anticipated additional costs to the regulants.

**Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Fiscal Impact of Proposed Regulation**

Summary:

The proposed amendment to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals will remove the requirement of providing documentation from specific professionals as was required for applicants that qualify for the conventional onsite sewage system installer exam waiver. No fiscal impact to the Board is expected as a result of the amendments.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Fiscal Impact:

	FY 2014	FY 2015	FY2016	FY2017
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$0	\$0
Total Fiscal Impact	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect exam waiver applicants for the conventional onsite sewage system installer license.

Estimated Number of Regulants: Approximately 200 applicants annually.

Projected Cost to Regulants: No financial impact to regulants or applicants is expected as a result of the proposed regulation amendment.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternatives have been identified.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

During review of the regulations to determine areas that could be amended or repealed to provide for less stringent requirements, the entry requirements for examination waiver applicants were identified as being too burdensome and providing little flexibility for evaluation of an applicant's experience. The detailed list of individuals who were required to provide acceptable verification of experience had the unintended consequence of limiting an applicant's ability to have his experience verified, even if such experience adequately met the regulatory and statutory provisions for entry. After evaluation of the language and the requirements necessary to ensure minimum competency while still protecting the health, safety, and welfare of the public, staff recommended and the Board adopted the proposed changes that require appropriate verification of experience but eliminates the detailed and limited list of those who may provide such verification.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Jerry Franklin	Licensure of onsite sewage system operators is unnecessary and of no benefit to the public. It creates a barrier to entry into the profession and increases costs for doing business. Licensure does nothing for the industry that could not be accomplished more effectively by Angie's List, Superpages, or Home Advisor.	The Board is mandated by law to license specific individuals, including onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators (§ 54.1-2301.C of the Code of Virginia). The Board does not have the authority to change the law and must carry out the duties and responsibilities under its purview in accordance with the Code of Virginia.
Anonymous	Agrees with the proposed amendment. The commenter indicates that it is unnecessary and burdensome to require contractors to provide completion statements of past work to verify experience. In addition, the commenter suggests deleting 18 VAC 160-20-97 in its entirety and instead include a provision to require an applicant to obtain three references to verify work experience. Further, the commenter does not think a person who installs onsite sewage systems should be required to hold two licenses (Contractors Board firm license and WWWOSSP Board individual license).	The Board appreciates the commenter's support of the amendment to reduce unnecessary and burdensome regulatory requirements. The Board will consider the commenter's suggestion during the development and adoption of the proposed text. As to the requirement for all individuals performing onsite sewage system work to hold a license from the WWWOSSP Board, the Board is mandated by law to license specific individuals, including onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators (§ 54.1-2301.C of the Code of Virginia). The Board does not have the authority to change the law and must carry out the duties and responsibilities under its purview in accordance with the Code of Virginia.
Jeff Walker	The commenter suggests that the Board implement an ethical component in the regulations. The failure to properly design, construct, or maintain onsite sewage systems has an economic and environmental impact. The Board should be responsible for providing guidance regarding the scope of practice for license-holders.	The purpose of this action is to reduce unnecessary and overly burdensome requirements pursuant to the Governor's Regulatory Reform Initiative. It would not be appropriate in this action to develop new regulations that increase a licensee's regulatory responsibilities. This suggestion may be considered in a future regulatory action.
Robert Charnley	The commenter states that the Board's regulations cover a diverse group of professionals that perform a variety of unique services. Due to that diversity and the number of licenses involved, amendment or elimination of certain regulations meant to benefit one profession could be detrimental to another. The commenter suggests that the Board consider distinct definitions or regulatory subsections to distinguish the various licenses under the Board's purview.	The Board concurs that this should be considered in a future regulatory review process. Because the purpose of this action is to reduce unnecessary and overly burdensome requirements pursuant to the Governor's Regulatory Reform Initiative, it would not be appropriate in this action to conduct a comprehensive review of the regulations that would likely result in new/additional regulations.

<p>Bob Marshall, Cloverleaf Environmental Consulting, Inc.</p>	<p>The commenter suggests adding a requirement for each license category of onsite soil evaluator to require a signature and seal on all work, and to include provisions for electronic signature and seal.</p>	<p>The purpose of this action is to reduce unnecessary and overly burdensome requirements pursuant to the Governor's Regulatory Reform Initiative. It would not be appropriate in this action to develop new regulations that increase a licensee's regulatory responsibilities. This suggestion may be considered in a future regulatory action.</p>
--	---	---

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action will have no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
<p>18VAC160-20-97.C.2.a</p>	<p>N/A</p>	<p>As an entry requirement for licensure as a conventional onsite sewage system installer and qualify for exam waiver, the applicant must provide documentation of being actively engaged in performing the duties of a conventional onsite sewage system installer for at least</p>	<p>The proposed change would eliminate the need to provide documentation by specific professionals for those applicants who qualify for the conventional onsite sewage system installer exam waiver.</p>

		<p>eight years within the 12-year period immediately preceding the date of application. This documentation shall be provided by one or more of the following:</p> <ol style="list-style-type: none">(1) VDH Authorized Onsite Soil Evaluator (AOSE) for work performed prior to July 1, 2009;(2) Licensed interim onsite soil evaluator;(3) Licensed conventional or alternative onsite soil evaluator;(4) Licensed conventional or alternative onsite sewage system installer; <p>or</p> <ol style="list-style-type: none">(5) Virginia licensed professional engineer.	
--	--	---	--