



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Waterworks and Wastewater Works Operators
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 160 -20
<b>Regulation title</b>	Virginia Board for Waterworks and Wastewater Works Operators Regulation
<b>Action title</b>	Amend
<b>Document preparation date</b>	July 20, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The Board proposes to amend its regulations to create a conditional license.

Conditional licensure will require the applicant to meet all of the entry requirements for licensure except the requirement for experience operating a waterworks classified by the Virginia Department of Health (VDH) or a wastewater works classified by the Virginia Department of Environmental Quality (DEQ). Experience obtained at comparable non-classified facilities would qualify an applicant to sit for the Board's examination. Those passing the examination would be issued a conditional license. Upon completion of and documentation to the Board of one-half of the classified facility work experience required by the regulations, those holding a conditional license would be issued a license authorizing them to operate a classified facility.

Those holding conditional licenses will be required to pay the license renewal fee to maintain their conditional license; to complete continuing professional education (CPE) if they hold a waterworks conditional license; and to be subject to the disciplinary provisions of the Board's regulations.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Section 54.1-2301 B. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>) states that the Board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

The imperative form of the verb “shall” is used, making the Board’s authority to regulate mandatory rather than discretionary.

## 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 and the problems the proposal is intended to solve.*

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The purpose of the planned regulation amendments is to allow applicants that meet all of the Board’s license qualification requirements except for experience at a classified facility to sit for the Board’s examination. Those so qualified who do pass the examination will be issued a conditional license. A full license will be issued upon receipt of documentation of one-half of the classified facility experience from a conditional license holder. The public health, safety and welfare will benefit from a larger pool of qualified individuals that can more quickly become licensed to operate a classified facility and from the operation of non-classified facilities by those who have met the standards set by the Board’s regulations.

The goal is to allow individuals who are technically qualified but who have not obtained experience at a classified facility operated under the oversight of the Virginia Department of Health (VDH) or the Virginia Department of Environmental Quality (DEQ) to sit for the Board’s examination. The Board expects a disproportionately large number of operator retirements in the coming years and feels that this amendment will create a pool of qualified individuals that can become licensed after a relatively short period of employment at a classified facility. Costs to the facilities (many of which are publicly owned and funded) to recruit replacements should be reduced as a result.

Conditional licensees operating non-classified facilities would be under the disciplinary authority of the Board. The Board can take action against a conditional license holder should his operation cause an adverse affect to the consuming public or to the classified facilities receiving his treated waste.

## Substance

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

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The definition section (18 VAC 160-20-10) is being amended to add four definitions to enhance the clarity of the amendments to the regulation text.

The license required section (18 VAC 160-20-74) is being amended to add a subsection stating that a conditional license shall not authorize an individual to serve as the operator of a classified facility.

A new section (18 VAC 160-20-95) is being added to establish the entry standards for a conditional license and the standards one holding a conditional license must meet to obtain a license authorizing him to operate a classified facility.

The maintenance of license section (18 VAC 160-20-104) is being amended to require conditional licensees to notify the Board in writing of changes in name or address, and to operate under the name in which the license is issued.

The renewal section (18 VAC 160-20-106) is being amended to provide for conditional licenses to be issued, expired, and renewed in the same manner as licenses.

The continuing professional education section (18 VAC 160-20-109) is being amended to require conditionally licensed waterworks operators to meet the continuing professional education (CPE) requirement as a condition of conditional license renewal.

The disciplinary section (18 VAC 160-20-140) is being amended to add conditional licensees as an entity under the disciplinary authority of the Board.

## 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 so indicate.*

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No disadvantage to the public or the Commonwealth has been identified.

The primary advantages to the public are the availability of a pool of conditional licensees that are qualified to fill classified facility operator vacancies and the increased competency of conditional licensees operating non-classified facilities whose performance can impact on the public health, safety and welfare.

From time to time classified facilities that receive material from non-classified facilities are adversely impacted by errors in the operation of the non-classified facility. This proposal allows non-classified facilities to have their operators obtain a conditional license. Better non-classified

facility operation should result and any act by a conditional licensee that fails to comply with the board’s regulations subjects the conditional licensee to the Board disciplinary authority.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	(a) Fund source – NGF Fund detail – 0900  (b) No one-time or ongoing costs are associated with the proposed regulation amendments.
<b>Projected cost of the regulation on localities</b>	None anticipated
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Individuals applying for licensure as waterworks or wastewater works facility operators that do not have experience at a classified facility.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	The Department currently regulates approximately 5,417 Waterworks and Wastewater Works Operators.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	There will be no change in the cost to individuals, businesses, or other regulants.

**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.*

The Board considered allowing non-classified facility experience to be weighed the same as classified facility experience when considering an applicant for licensure to operate a classified facility.

The Board surveyed 49 states and the District of Columbia to determine whether they allowed applicants without experience at a classified facility to sit for the examination and become licensed. Approximately half of the states responded, and of those responding, half allowed some experience gained at a non-classified facility to count towards satisfying a portion of the entry experience requirement.

Reviewing the details of how the responding states weighed non-classified facility experience led the Board to conclude that at least some percentage of the required experience must be obtained at a classified facility that requiring government oversight and must be obtained before a license should be issued authorizing one to operate a Virginia classified facility.

The Board decided that non-classified facility experience was adequate to qualify an individual to sit for the Board’s licensing examination but that a minimum of 50% of an applicant’s

experience must be obtained at a classified facility to qualify one for licensure to operate a classified facility.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Steve Austin	Asks the Board to amend the regulation to allow him the opportunity to grow as an operator in the field of wastewater operation.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Douglas V. Hartline	Strongly opposed as the level of experience gained at non-classified facilities could be or would be seriously flawed.	The Board understands the concern and stopped short of allowing experience at a non-classified facility to fully qualify an individual for licensure.
Tony L. Sharp	Same as Mr. Hartline.	Same as for Mr. Hartline.
Jennifer M. Hoover, P.E.	Asked what the proposed change to the experience requirements is.	Staff responded that there was no specific proposal at the time. The Board is considering amending its regulations and is seeking public comment.
Dorian Tolbert	Asked what would be considered a non-classified facility.	Staff responded that a non-classified facility would be a waterworks that has not been classified by the Virginia Department of Health or a wastewater works that has not been classified by the Virginia Department of Environmental Quality.
Mr. & Mrs. Cecil E. Trent	Stated that a water facility serving fewer than 50 trailer lots should not have to employ a licensed operator.	The Board has no statutory authority to grant waivers to the requirement that waterworks facilities be operated by licensed personnel.
Joseph H. St. John	Asked that the regulation not be amended.	The Board understands the concern and stopped short of allowing experience at a non-classified facility to fully qualify an individual for licensure.
Charles Orenic	Favored an amendment to allow experience operating a Class III extended aeration wastewater plant to qualify for licensure.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
F. Allen Wilcox	Discouraged at government's intrusion into the operation of very small community water systems	This request is beyond the scope of the Board's NOIRA, which covered only consideration of experience at non-classified

	and feels that his experience is adequate to allow him to be licensed as a Class VI waterworks operator without taking the Board's examination.	facilities to qualify one for the examination.
Russell K. Dorton	Feels that the employees of non-classified facilities should be required to have a license just like the employees that operate the classified facilities.	The Board has no statutory authority to require those operating non-classified facilities to obtain a license.
Douglas Phillips, Jr.	Class VI should be amended to include any water duties (experience), sampling, etc.	This request is beyond the scope of the Board's NOIRA, which covered only consideration of experience at non-classified facilities to qualify one for the examination.
Todd Vander Pol	Count the experience gained at a non-classified facility and let the examination measure the knowledge level of the applicant.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Edward Patrick	Thinks an individual should be able to set for the examination because hands-on is the only way some persons can learn their job.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
William M. Wood	Fears a decision to depart from the current structured experience requirements would diminish the sincere efforts of those that have strived to meet the established requirement.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Barry T. Dunkley, P.E.	Favors allowing non-classified facility experience to allow industries to use the licensure program for considering people for job advancement and raises, and to allow people that work at non-classified facilities to be considered for jobs in the public sector that require a license.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Town of Gretna, VA	Supports the change.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.



Mildred I. Rollins	Experience at a non-classified facility should qualify an individual to sit for the examination.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Chuck Barnes	This change would be constructive only if there are additional licenses for the different programs put into place before the change is made.	The Board has no statutory authority to require the regulation of additional types of facilities.
Donald F. Hearl	Favors change as one may have been employed for many years at a non-classified facility, gained considerable valuable experience and still not be eligible for the examination.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Ken Brookmyer	Sees no reason not to consider experience at a non-classified facility as he seriously questions the value of the entire experience requirement in any case.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Michael Spaetzel	Favors amending the regulation as those that have been given the opportunity to sit for the examination are more aware of the regulations and that Publicly Owned Treatment Works (POTW) will benefit by receiving wastewater from non-certified facilities operated by licensed individuals.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
N. William Beckwith	Feels all experience gained in the employment of a water/wastewater operation should count and the personnel interested in bettering themselves by taking the examination should be allowed to do so as a licensed operator is better than one that is not.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.
Mitchell Bernard	Experience obtained at non-classified facilities should be accepted if those facilities are required to report to VDH, allowing a means to check the output or quality of the processes.	The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.

<p>Norman Fisher</p>	<p>Operators working in an engineered designed wastewater treatment facility who sit for the examination are more aware of regulations and wastewater treatment operations. The examination motivates operators to study and learn about wastewater treatment and requirements which benefits operators and the environment. Having operators licensed by the State provides the receiving POTW regulators knowledge of training and experience gained at the facility they oversee which directly impacts on them.</p>	<p>The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.</p>
<p>J19341933@aol.com</p>	<p>Experience obtained at a non-classified waterworks or wastewater works facility would not qualify an individual to sit for the examination.</p>	<p>The Board's proposal will count as qualifying toward the examination any experience gained at a non-classified facility that is comparable to a classified facility. Those so qualified that pass the examination may be granted a conditional license and may qualify for licensure after meeting 50% of the classified facility experience.</p>

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

No family impact has been identified.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if	Current requirement	Proposed change and rationale
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	<b>applicable</b>		
18 VAC 160-20-10	N/A	Silent	Adds definition of “classified facility” to distinguish classified facilities from non-classified facilities.
18 VAC 160-20-10	N/A	Silent	Adds definition of “conditional licensee” to add to clarity.
18 VAC 160-20-10	N/A	Silent	Adds definition of “conditional licensure” or “conditional license” to distinguish from licensure.
18 VAC 160-20-10	N/A	Silent	Adds definition of “non-classified facility” to distinguish them from classified facilities.
None	18 VAC 160-20-74 B	Silent	Clarifies that a conditional licensee may not operate a classified facility.
None	18 VAC 160-20-95 A	Silent	Sets the entry standards for a conditional license by requiring an application and allowing one to sit for the examination and receive a conditional license upon meeting all of the entry requirements for a full license except for the classified facility experience requirement. Specifies that the experience obtained at a non-classified facility must be comparable to a classified facility in size and in the treatment processes used. Limits the experience to that obtained while actually operating the facility and makes certain exceptions.
None	18 VAC 160-20-95 B	Silent	Requires that applicants meeting the qualifications in subsection A sit for a specific examination and specifies that a conditional license will be issued upon obtaining a passing grade on the examination.
None	18 VAC 160-20-95 C	Silent	Sets standards for qualifying for a license after having obtained a conditional license.
18 VAC 160-20-104	N/A	Applies only to license holders.	Requires those issued a conditional license to comply with the maintenance of license requirements already required of license holders.
18 VAC 160-20-106	N/A	Applies only to license holders.	Requires those issued a conditional license to meet the same expiration, renewal and reinstatement requirements as one holding a license.
18 VAC 160-20-109	N/A	Applies only to license holders.	Requires those issued a waterworks conditional license to meet the continuing professional education (CPE) in the same manner as one holding a license.
18 VAC 160-20-140	N/A	Applies only to license holders.	Extends to conditional licensees the disciplinary authority that currently applies to licensees.