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Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC5-615
Regulation title	Authorized Onsite Soil Evaluator Regulations
Action title	Repeal the regulation
Date this document prepared	April 24, 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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The 2007 Virginia General Assembly enacted House Bill 3134, which transferred implementation, administration, and enforcement of licensing requirements for onsite soil evaluators from the Virginia Department of Health (VDH) to the Department of Professional and Occupational Regulation (DPOR) and administered by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. DPOR promulgated regulations for onsite soil evaluators on July 1, 2009 (18 VAC 160-20). House Bill 3134 abrogated the Board of Health's authority to license Authorized Onsite Soil Evaluators (AOSEs) and, while Title 32.1 of the *Code of Virginia* contains other references to the Board of Health's regulation of AOSEs, VDH has successfully implemented those statutory provisions independent of 12 VAC 5-615. As such, 12 VAC 5-615 is no longer necessary.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Commissioner of Health approved this action on behalf of the Board of Health on April 25, 2013.

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.

The Board does not have a statutory mandate to establish a program for AOSEs because of the amendments to the Code of Virginia (HB 3134 of the 2007 General Assembly session). The Board still has legislative authority to accept and review evaluations and designs from licensed onsite soil evaluators pursuant to Va. Code §§ 32.1-163, 32.1-163.6, and 32.1-164.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The AOSE Regulations were promulgated July 1, 2002 pursuant to provisions of Va. Code §32.1-163.4, 136.5, 164, and 164.1:01. During the 2007 General Assembly session, [HB 3134](#) (2007 Acts of Assembly, Ch. 892) amended and re-enacted Va. Code §§ 32.1-163, 32.1-164, 54.1-300, 54.1-2300, 54.1-2301, and 54.1-2302. The legislation rescinded certificate requirements administered by VDH. In its place, the legislation directed DPOR to promulgate regulations for persons seeking a license as an onsite soil evaluator. The legislation obviates the need for the Board of Health to administer a certificate program for AOSEs.

DPOR adopted regulations for onsite soil evaluators (18 VAC 160-20). The AOSE Regulations unnecessarily establish a certificate program for qualifying individuals as AOSEs, including conflict of interest requirements. Documentation requirements in the AOSE Regulations for reports and designs are now contained in VDH policies that implement other regulations (e.g., 12 VAC 5-610, 12 VAC5-613, 12 VAC5-640, and 12 VAC5-630). Processing time limits and definitions have been established in the Code and agency policies, which further render the AOSE Regulations unnecessary.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The agency does not expect controversy because the regulations are being repealed. DPOR has regulations for the licensing of onsite soil evaluators. The Board of Health's program will not change with the repeal of this regulation. The Department of Professional and Occupational Regulation (DPOR), Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals now administers the program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

All requirements in 12 VAC 5-615 will be repealed.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public and the Commonwealth will be to remove unnecessary regulations that are not being implemented by VDH. Repealing the regulation will prevent confusion. There is not a disadvantage to the public and Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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 is no requirement that would be more restrictive than federal requirements. The federal government does not regulate the profession of onsite soil evaluators.

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.

No locality is particularly affected.

Regulatory flexibility analysis

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.

The alternative is to leave the regulations in place even though they do not have any effect and are not being enforced. The Board can effectively administer its responsibilities through other applicable provisions of the Code of Virginia.

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.

N/A = not applicable

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	N/A
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	N/A
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	N/A
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	N/A
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	N/A
Beneficial impact the regulation is designed to produce.	Reduce regulatory confusion since another state agency regulates the licensing

	requirements.
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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.

Repealing this regulation will not change any aspect of the Board of Health’s program. Since enactment of HB 3134 and the adoption of regulations on July 1, 2009 by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, the Board of Health no longer certifies Authorized Onsite Soil Evaluators.

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.

There is no impact of the proposed regulatory action on family.

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), use this chart:

Current section number	Proposed new section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 5-615-10	N/A	Describes the authority for the regulations.	The Board does not have authority to qualify individuals as Authorized Onsite Soil Evaluators (see HB 3134 from the 2007 General Assembly session). DPOR enacted regulations that

			administer a licensing program for onsite soil evaluators (18 VAC160-20).
12 VAC 5-615-20	N/A	Describes the purpose of the regulations.	The Board does not have authority to qualify individuals as AOSEs. The Board does not need procedures to become an AOSE or maintain a certificate. Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs.
12 VAC 5-615-30	N/A	Describes the relationship to the Sewage Handling and Disposal Regulations.	The Board is repealing the regulation so its relationship to another regulation is moot.
12 VAC 5-615-40	N/A	Describes the administration of the regulation.	The Board is repealing the regulation so its administration is moot.
12 VAC 5-615-50	N/A	Describes the creation of an advisory committee.	The Board is repealing the regulation. The Sewage Handling and Disposal Regulations establish an advisory committee at 12 VAC 5-610-50.
12 VAC 5-615-60	N/A	Describes the scope of the regulation.	The Board is repealing the regulation so its scope is moot. Content and form for site and soil evaluation reports are administered through the Sewage Handling and Disposal Regulations (12 VAC 5-610). Local ordinances are addressed in the Code of Virginia.
12 VAC 5-615-70	N/A	Describes roles and responsibilities for AOSE or professional engineers working in consultation with an AOSE.	The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12 VAC 5-610). This regulation is not necessary.
12 VAC 5-615-80	N/A	Describes processing time limits and deemed approval.	Processing time limits and deemed approval are addressed in Title 32.1, Chapter 6 of the Code of Virginia. The regulation is not necessary.
12 VAC 5-615-90	N/A	Describes the practice of engineering.	The practice of engineering is defined in the Regulations for Alternative Onsite Sewage Systems. Va. Code Section 54.1-400 provides additional guidance regarding the practice of engineer. This regulation is not necessary.
12 VAC 5-615-100	N/A	Requires a person to sign a certification statement for submissions to the Department of Health.	The Board does not have authority to qualify individuals as AOSEs. DPOR regulates the practice. The Board has other policies and regulations that implement this regulation. Va Code §32.1-163.5 of the Code of Virginia requires private sector evaluations and designs to be certified as complying with the Board's regulations. This regulation is not necessary.
12 VAC 5-615-110	N/A	Describes right of entry.	The agency already has this authority pursuant to §32.1-25 of the Code of Virginia. This regulation is not necessary.
12 VAC 5-615-120	N/A	Provides a list of definitions.	These terms are adequately addressed in the Code of Virginia and through DPOR's licensing programs and policies. Deleting these definitions will not impact the Board of Health's program. This regulation is not necessary.
12 VAC 5-615-130	N/A	Provides notice of the administrative process act.	Va. Code Section 2.2-4000 applies to the agency. This regulation is not necessary.

12 VAC 5-615-140	N/A	Provides authority to develop an emergency order or rule.	12 VAC 5-615 is being repealed in its entirety so there is no need for this authority.
12 VAC 5-615-150	N/A	Provides details about the enforcement of the regulation.	The Board is repealing the regulation so details about the enforcement of the regulation are moot.
12 VAC 5-615-160	N/A	Provides notice that the regulations may be suspended during disasters.	The Board is repealing the regulation so this regulation is not necessary.
12 VAC 5-615-170	N/A	Provides ability to grant variances.	The Board is repealing the regulation so procedures to grant a variance are not necessary.
12 VAC 5-615-180	N/A	Provides requirements for agency case decisions.	The Board is repealing the regulation so notice for case decisions is not necessary.
12 VAC 5-615-190	N/A	Reserved for future use.	The Board is repealing the regulation so future use will not occur.
12 VAC 5-615-200	N/A	Provides requirements for an agency case decision.	The Board is repealing the regulation so case decisions pursuant to this regulation will not be made.
12 VAC 5-615-210	N/A	Describes renewal of AOSE certificates.	DPOR has regulatory oversight for onsite soil evaluators.
12 VAC 5-615-220	N/A	Reserved for future use.	The Board is repealing the regulation so future use will not occur.
12 VAC 5-615-230	N/A	Describes application requirements to obtain an AOSE certification.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-240	N/A	Describes processing procedures for AOSE applications.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-250	N/A	Describes fees to process applications for certification as an AOSE.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-260	N/A	Describes expiration of the AOSE certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-270	N/A	Describes renewal procedures for the AOSE certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-280	N/A	Describes site evaluation and design requirements for certificate holders.	The Board does not issue certificates. DPOR has regulatory oversight for licensing onsite soil evaluators. The Board of Health has regulations and policies that address applications with supporting private sector work. The Board is repealing this regulation because it is not necessary.
12 VAC 5-615-290	N/A	Describes authority to revoke or suspend an AOSE certification.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-300	N/A	Describes means to have a certificate re-instated.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-310	N/A	Describes appeal process for suspension or revocation of a certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-320	N/A	Provides that a certificate holder cannot certify a site that has been previously denied.	The Board of Health has other regulations and policies that address applications with supporting private sector work.
12 VAC 5-615-330	N/A	Requires an AOSE to notify when there has been a	DPOR has regulatory oversight for licensing onsite soil evaluators.

		change in status.	
12 VAC 5-615-340	N/A	Describes minimum requirements for documentation.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-350	N/A	Describes minimum documentation requirements and time limits to process applications.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-360	N/A	Describes minimum information needed for a site evaluation report.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-370	N/A	Describes access to information	The Board of Health has other regulations and policies that address this topic. The Freedom of Information Act also adequately addresses this topic. This regulation is not necessary.
12 VAC 5-615-380	N/A	Describes minimum information needed for design and construction, including site denial.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-390	N/A	Describes professional courtesy reviews.	The Board of Health has other regulations and policies that address this topic. This regulation is not necessary.
12 VAC 5-615-400	N/A	Describes field checks.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-410	N/A	Describes a certificate holder's responsibility to the public.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-420	N/A	Describes obligations of the certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-430	N/A	Describes conflict of interest disclosure for a certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-440	N/A	Describes additional obligations of a certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-450	N/A	Describes a certificate holder's obligation to be truthful.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-460	N/A	Describes the certificate holder's other responsibilities.	The Board is repealing the regulation. DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-470	N/A	Describes the certificate holder's good standing in other jurisdictions.	The Board is repealing the regulation. DPOR has regulatory oversight for licensing onsite soil evaluators.