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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Virginia Administrative Code (VAC) citation	18 VAC160-20
Regulation title	Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Date	February 5, 2016

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

§ 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.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

No viable alternatives for achieving the purpose of the existing regulation could be determined. The regulation enables the Board to fulfill the statutory requirements established in Chapter 2 and Chapter 23 of Title 54.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Board's statutory requirements are executed in the least burdensome and most efficient and cost effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Summary of Comment	Agency Response
Bob Marshall, Cloverleaf Environmental Consulting, Inc.	<p>The commenter provided the following comments:</p> <ul style="list-style-type: none"> -Repeal the Board's existing regulations as it no longer protects public health, safety and welfare. -Promulgate new regulations and abandon the Board's authority to promulgate regulations for the onsite sewage system professionals, specifically evaluators and installers. -Withdraw the currently proposed creation of two chapters, until inconsistencies regarding §54.1-2301 of the Code of Virginia are eliminated. -Proposed regulations will not improve clarity of regulations, will not ensure consistency with current Board practices and legal requirements, and blatantly disregards standards of practice. -Believes that the Periodic Review is an excellent opportunity for the Board to evaluate its active market participants and any effects on competition. 	<p>The Board thanks the commenter for providing comments for consideration. It appears that several of the comments provided do not pertain to the current regulations, but to a separate regulatory action for which there is an opportunity for public comment specific to those changes. In addition, other comments suggest changes to the Board's statutory authority. Chapter 23 of Title 54.1 of the Code of Virginia mandates the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators. The Board's adherence to the above mandate is not discretionary. Any changes to the Board's statutory mandates would have to be made legislatively.</p>
Bob Marshall, Cloverleaf	<p>The commenter provided a graphic regarding, "Essentialism".</p>	<p>The Board thanks the commenter.</p>

<p>Environmental Consulting, Inc.</p>		
<p>James B. Slusser</p>	<p>The commenter provided the following comments:</p> <p>-Repeal the existing Board regulations as they fail to protect the interests of the citizenry in regards to improvement of real property.</p> <p>-Recommendations to be delivered to the General Assembly and to Governor McAuliffe: (1) the removal of the onsite soil evaluators from the Board and their placement with the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA), remove the conventional onsite soil evaluator license, remove onsite installers from the Board and their placement with the Board for Contractors, and the Department of Planning and Budget should reconvene the small business impact assessment.</p> <p>-The following is the justification for the above recommendations: (1) onsite soil evaluators are currently responsible for design improvements via an exemption under §54.1-402.A.11, to be a licensed engineer. The personal decision to choose a profession is a fundamental right protected by the Constitution and the Commonwealth has a responsibility to promote the free market system (please see §59.1-9.2 of the Code of Virginia for reference), ineffective oversight has allowed one organization to exploit what appears to be a monopoly of professional design services. Can the APELSCIDLA Board constrain WWWOSSP licensees? (2) the conventional soil evaluator license confuses citizens and lacks functionality, owners with difficult soils may not understand the need to have someone with a higher</p>	<p>The Board thanks the commenter for providing comments for consideration. It appears the comments provided pertain primarily to statutory provisions and another regulatory board completely separate from this Board. Chapter 23 of Title 54.1 of the Code of Virginia mandates the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators. In addition, said statutes mandate the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems. The Board's adherence to the above mandate is not discretionary. Also the Board does not have the authority to delegate a licensure program to another regulatory board.</p>

	class of license thus placing an undue burden and cost on citizen.	
Robert Savage, Savage Onsite Septic, LLC	<p>The commenter provided the following comments:</p> <ul style="list-style-type: none"> - Recommends that the General Assembly and Governor McCauliffe (sic) remove the onsite soil evaluators from the Board and place them with the APELSCIDLA board. Such recommendation is based on the following rationale: onsite soil evaluators, through an exemption to the practice of engineering, have more in common with the APELSCIDLA Board and there appears to be a conflict with the WWWOSSP Board to regulate the interest of those who install sewage systems and those who design them. The board has failed to address a conflict of interest that exists between the Virginia Health Department (VDH) who employees onsite soil evaluators as direct service providers and the private sector. The direct offering of design services by VDH incentives citizens to seek taxpayer subsidized rates offered by VDH wherein the private sector must charge a fair market rate for services to cover operating costs. 	<p>The Board thanks the commenter for providing comments for consideration. Chapter 23 of Title 54.1 of the Code of Virginia mandates the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators. The Board's adherence to the above mandate is not discretionary. Any changes to the Board's statutory mandates would have to be made legislatively.</p>
Jeff T. Walker	<p>The commenter provided the following comments:</p> <ul style="list-style-type: none"> - The Virginia Department of Planning and Budget Economic Impact Analysis dated August 18, 2015 is inadequate in regards to small businesses that employ onsite soil evaluators who are in competition with a state 	<p>The Board thanks the commenter for providing comments for consideration. Issues and concerns regarding the provision of design services by a public sector agency cannot be addressed via the Board's regulations, thus, it would not be appropriate for the Board to commence a regulatory action on issues outside of the Board's purview. In addition, it appears that several of the comments provided do not pertain to the current regulations, but to a separate regulatory action for which there is an</p>

	<p>agency that provides subsidized design services. These regulations lack reference to standards of practice, provisions for disclosure of conflict of interest, an appearance of benefit to individuals and organizations which offer training to fulfill requirements.</p> <ul style="list-style-type: none"> - The Board should be disqualified from promulgating any amendments to the regulations until an investigation by the Office of the Inspector General or the appropriate responsible party has addressed this apparent conflict of interest. - The largest design firm in the state, which competes with small businesses, has undisclosed influence over the Board. The result is promulgation of dual standards of entrance, training, and class of licensure not enabled by legislation and which contribute to the Virginia Anti-trust Act §59.1-9.1 of the Code of Virginia. - The journeyman class of Conventional Onsite Soil Evaluator has no requirements for education and minimal need to document training or experience, nor any guarantee of past or future supervision. - Requests redevelopment of Department of Planning and Budget to return to the issue and develop a study in consistent(sic) with applicable guidance and code. 	<p>opportunity for public comment specific to those changes.</p>
<p>Jeff Walker</p>	<p>The commenter provided the following comments:</p> <ul style="list-style-type: none"> - The proposed regulations should be amended. - Documents obtained under 	<p>The Board thanks the commenter for providing comments for consideration. It appears that several of the comments provided do not pertain to the current regulations, but to a separate regulatory</p>

	<p>the Freedom of Information Act (FOIA) have disclosed inappropriate influences, including financial incentives, prejudices and apparent collusion by and between officers of the Board.</p> <ul style="list-style-type: none"> - Review has been complicated by private meetings between staff of the VDH and the Department of Professional and Occupational Regulation. Conflict of Interest forms do not provide disclosure of conflicting interests - The Board, under guidance from staff, neglected to develop a regulated professional seal in compliance with 18 VAC 10-20-760 B. 4.4. A seal benefits the public by conveying that the document is authentic and under the control of the licensed professional. - The distinct differences in responsibilities, risk and scale (comparing water and wastewater works operators to onsite soil evaluators and installers) further strengthens the point that onsite soil evaluators should be administered through the APELSCIDLA board and licensed contractors properly belong within the Contractors board. 	<p>action for which there is an opportunity for public comment specific to those changes. In addition, other comments suggest changes to the Board's statutory authority. Chapter 23 of Title 54.1 of the Code of Virginia mandates the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators. The Board's adherence to the above mandate is not discretionary. Any changes to the Board's statutory mandates would have to be made legislatively.</p>
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Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation meets the criteria set forth in Executive Order 17 (2014). The regulation establishes the licensing requirements for individuals seeking licensure as waterworks operators, wastewater works

operators, onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators. The regulation is clearly written and easily understandable.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The agency is recommending that the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Code of Virginia §§ 54.1-201.5 and 54.1-2301 mandates the Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

The comments received during the public comment either require a statutory change in order to remove the Board's authority or did not pertain to this regulatory action; therefore a change is not warranted.

The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or contravene federal or state law or regulation. A periodic review of the regulation was completed on January 11, 2012. On January 14, 2016, the Board reviewed the regulation and, for reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.