



Final Regulation Agency Background Document

Agency name	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Virginia Administrative Code (VAC) citation	18 VAC160-20
Regulation title	Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations
Action title	Amend Definitions of Supervision, SDS Experience, and Document Requirements for Installers
Date this document prepared	May 27, 2014

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The proposed language changes the definitions of "direct supervisor" and "direct supervision", clarifying that licensees may supervise the work of unlicensed individuals who are not seeking licensure. Also, the requirements for applicants for an individual sewage system installer license have been modified to reflect current industry procedures consistent with the Virginia Department of Health (VDH). The experience requirement for the individual sewage system installer license has also been changed to allow an individual's installation experience to fulfill the requirement for licensure as long as the applicant's firm is properly licensed as a Virginia contractor with the specialty of Sewage Disposal Systems (SDS) at the time he applies for the installer license.

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 or board taking the action, and (3) the title of the regulation.

On April 10, 2014, the Board for Wastewater Works and Waterworks and Onsite Sewage System Professionals (Board) voted to adopt these amendments to the Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals' Regulations as final.

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.D of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>) states that, "The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii) operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems; (f) the division of sewage system installers into classes, one of which shall be restricted to the installation of conventional onsite sewage systems; and (g) other criteria the Board deems necessary."

The proposed language will reflect current procedures consistent with the Virginia Department of Health that pertain to the issuance of permits obtained by contractors for the installation of sewage systems, completion statements submitted to VDH by the contractor after the installation, and inspection reports and completion statements submitted to VDH by a licensed onsite soil evaluator or Virginia-licensed professional engineer. The requirement to provide these documents for an installer license will sufficiently demonstrate the individual's installation experience without overburdening him with unnecessary documents such as a system operation permit.

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 it 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 changes to the regulations are necessary to allow individuals currently working in the water, wastewater, soil evaluation, sewage installation, or sewage operation industry to continue to work if under the direct supervision of a licensed individual. Licensees will supervise both individuals who are seeking experience for licensure as well as individuals who work in the industry but are not seeking licensure. Evaluation, installation, and operation duties will continue to be controlled by a properly licensed person

in order to continue to safeguard the public; but persons who are unlicensed, that work under the direct supervision of a licensee, will not be mandated to apply for licensure should they choose not to apply.

One goal of the proposed language includes amending the current requirements for documenting installation experience so as to make them more consistent with the true-to-life procedures in the onsite sewage system industry. Currently, a contractor completion statement and a separate AOSE/PE inspection report and completion statement are required by VDH after a system installation is complete.

In the proposed language, a sewage system installer license applicant would be required to submit copies of the contractor completion statements, corresponding inspection report and completion statements, and a signed statement from a supervisor within the company that performed the installation. This process is a standard that would apply to all installer applicants seeking to prove their qualifications for sewage system installation licensure. The applicant would merely need to provide copies of documents that are already required by VDH and kept as public records after the installation of a system.

Another goal of the proposed language is to allow technically qualified persons to obtain the installer license by proving their experience of installing systems without limiting them to the time period during which the contractor may or may not have had the SDS specialty on the contractor license. The current requirements preclude individuals from licensure who might otherwise be qualified, but whose firm may not have had the SDS specialty on the firm's contractor license during the time period of the employee's experience. The proposed language resolves this issue by separating the experience of the employee from the SDS specialty on the firm's contractor license. The applicant must have certification of his experience and proof that the firm, of which he is either an employee or a member of responsible management, has a proper Virginia contractor license with the SDS specialty at the time of his individual installer application. This accomplishes two things: it allows minimally-qualified individuals to meet the requirements for licensure while simultaneously ensuring continued compliance of existing sewage system installation contractors in Virginia.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Substantive changes include removing language from the definitions of "direct supervisor" and "direct supervision" which indicates that such supervision requires that the supervisee must intend to apply for a license. The proposed entry requirements for installers are less restrictive than the current language, and the documentation requirements for installers to prove experience are changed to be consistent with VDH procedures involved in the installation of a sewage system. The changes, although substantive in nature, are less restrictive than current requirements.

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.*
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1) The primary advantages to the public are less restrictive licensure requirements that still ensure minimum competency within the soil evaluation, septic installation, and septic operation fields.

2) The primary advantage to the Commonwealth is the continuance of a licensure program that protects the needs of protecting the public by ensuring minimum competency within the onsite sewage system industry. Simultaneously, the regulated community is not faced with unnecessary difficulties in obtaining the licensure required to continue to perform its business in the Commonwealth.

No disadvantages to the public or Commonwealth have been identified.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
18VAC160-20-97.C.3.a. & b	The proposed regulations include amendments to the current language that outlines the documentation requirements for installers to prove experience.	Language was removed to make terms consist with VDH forms	This amendment makes the language consistent with the terminology on VDH's forms.
18 VAC 160-20-97.C.3.a & b	The proposed regulations include amendments to the current language which outlines who shall certify certain documents to prove experience. In addition, the proposed text clarifies the two professionals who shall certify completion statements.	The new language was removed pertaining to who shall certify VDH completion statements. VDH is responsible for specifying who may certify completion statements, therefore it is unnecessary and potentially confusing to specify in these regulation who may certify VDH's forms. In addition, text was removed due to redundancy based on new clarifying language	Upon review of the new language in the proposed text and the public comments received, this amendment was not consistent with the terminology on VDH forms. In addition, other regulations specify the certifying professional in regards to VDH completion statements.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Regulation *#	Summary of Comment(s)	Board Response
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Commenter		
N/A	All applicants for an installer license should be required to pass an exam. As state and local requirements become more complicated, applicants should have to take tests to verify they are qualified. Experience stated is not as good as experience proven.	The Board appreciates the comment. This regulatory action is not recommending amendment of the current requirements for examination. The legislature has addressed the issue of examination for certain applicants.
John Sawdy (Received on Town Hall)		
N/A	Concurs with previous comment pertaining to experience.	The Board appreciates the comment. This regulatory action is not recommending amendment of the current requirements for examination. The legislature has addressed the issue of examination for certain applicants.
Dick Baker (Received on Town Hall)		
N/A	Indicates that there was no urgency to the amendment since the “proposed” text [fast-track language] was adopted December 2, 2009, but was not submitted to the Virginia Register until September 13, 2012. States that 22 comments were received and, as a result, the fast-track process was converted to the standard-rule making process. Indicates that pursuant to the APA, EO 14, and the Virginia Register Form, Style, and Procedure Manual, an agency typically responds to comments received during the public comment period. Indicates that EO 14 requires agencies to establish procedures for response	The Board appreciates the comment. All regulatory actions, including the date of each step in the progression of the regulatory review process, can be viewed by the public on Town Hall. Section 2.2-4012.1 of the Code of Virginia (Administrative Processes Act) establishes the fast-track rulemaking process. The amendments were filed as a fast-track action as they were not expected to be controversial. From January 19, 2010 to September 6, 2012 the fast-track action underwent executive branch review. After the executive
Bob Marshall Cloverleaf Env. Consultation, Inc. (Received on Town Hall)		

	<p>to comments and the inclusion of suggested changes that would improve the quality of the regulations. Questions why the public was not provided with a summarization of the comments from the fast-track action. Questions why the Board did not address the comments received during the fast-track process.</p>	<p>branch review and in accordance with the Administrative Process Act, the Board had a 30-day public comment period which included the opportunity to receive objections to the fast-track process, which was done. This section further states that, upon receipt of objections filed pursuant to the section, the Board must file notice of the objections with the Register of Regulations and “proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.” These steps were completed appropriately.</p>
<p>18 VAC 160-20-97.C.3A</p>	<p>As proposed, this regulation uses the term “authorized VDH employee” which appears to be in conflict with the Code of Virginia and the Board’s regulations. When is an “authorized VDH employee” anyone other than a Board license holder? The use of “authorized VDH employee’ is misleading as it asserts that a VDH employee certifies documents without a license. Recommends deleting the phrase “an authorized VDH employee” from this section</p>	<p>The Board appreciates the comment. The Office of the Attorney General is responsible for determining whether any proposed amendment to the regulations conflicts with any other state law currently in effect. On January 19, 2010 (during the fast-track process) and again on December 6, 2012 (during the standard process), the Board’s Counsel certified that the proposed amendments do not appear to conflict with any other state law, among other things.</p> <p>The Board concurs that the</p>
<p>Bob Marshall Cloverleaf Env. Consultation, Inc. (Received on Town Hall)</p>		

		<p>use of “authorized VDH employee” may be confusing and has deleted the sentence containing that phrase from the text.</p>
<p>18 VAC 160-20-10</p> <p>Bob Marshall, Cloverleaf Env. Consultant, Inc. (Received from Town Hall)</p>	<p>States the proposed changes to “direct supervision” removes the phrase “...for the purpose of obtaining the necessary competence to qualify for licensure...” This proposed change conflicts and alters the meaning and intent of “direct supervision” as defined in Code of Virginia §54.1-2300. The existing phrase was nonrestrictive by definition and simply offered additional information about the nature and purpose of direct supervision. This section appears to be in direct conflict with the Board’s regulations and may impact the quality of training and level of experience obtained for several licenses held by regulants of the Board. Recommends retaining or keeping the existing definition.</p>	<p>The Board appreciates the comment. “Direct supervision” is not defined in § 54.1-2300 of the Code of Virginia. Mandating that any work performed by a non- licensee under the direct supervision of a licensee be for a specific purpose is too restrictive, overly burdensome, and not necessary to protect the health, safety, and welfare of the public. Ultimately, the licensee is responsible for any actions of those he supervises, regardless of whether the employee is engaged in the work to become a licensee or not.</p>
<p>18 VAC 160-20-10</p>	<p>States concerns in modifying 18 VAC 160-20-10 as it pertains to the definition of “direct supervision.” Altering the definition in its current proposed state may have unintended consequences that will not be realized for some time and should receive additional consideration. The Board should consider how competence,</p>	<p>The Board appreciates the comment. Mandating that any work performed by a non- licensee under the direct supervision of a licensee be for a specific purpose is too restrictive, overly burdensome, and not necessary to protect the health, safety, and welfare of</p>

<p>James B Slusser, AOSE (Received from Town Hall)</p>	<p>personal judgment, and accountability plays in “direct supervision” while protecting the public health and public resources of the Commonwealth.</p>	<p>the public. Ultimately, the licensee is responsible for any actions of those he supervises, regardless of whether the employee is engaged in the work to become a licensee or not.</p>
<p>N/A</p>	<p>2014 General Assembly –Senate Bill 657</p> <p>States this bill appears to require changes to licensure requirements for COSSI, AOSSI, AOSSO, and COSSOs. If this bill becomes law, 18 VAC 160 may need additional changes and recommends we place any changes to the regulations on hold and have an additional public comment period before the Final Stage.</p>	<p>The Board appreciates the comment. Any regulatory changes that may be required as a result of Senate Bill 657, or any other regulation amendment necessitated by a change in the law, will be made via a separate regulatory action and is not a part of this action.</p>
<p>Robert B Charnley, III (Received from Town Hall)</p>	<p>Licensed contractors offer consumers guarantees and are qualified to perform installations which are backed by a one year warranty. In addition, fees support the [Contractors] Board and a fund to protect the consumer against a contractor that does not perform properly [Contractor Transaction Recovery Fund].</p>	<p>The Board appreciates the comments. The reference to a contractor’s license and the associated recovery fund is not applicable to this regulatory proposal as the contractor’s license and the associated recovery fund is administered and regulated by the Board for Contractors and not the WWWOSSP</p>

<p>Jeff Walker, Owner BRS&S, LLC Class B Contractor and AOSI (Received from Town Hall)</p>	<p>The fast-track regulations received many comments which to his knowledge were not addressed.</p> <p>There is no basis for an unlicensed individual to certify an installation or vouch for the performance of a contractor seeking licensure unless their duty as a code official allows them to act on behalf of the Commissioner of Health. The language “authorized VDH employee” should be stricken from the regulation. No building inspector would knowingly approve work completed by an unlicensed contractor.</p> <p>Additional concerns were raised regarding the approval of unlicensed work by VDH and when the boards will resolve these issues.</p>	<p>Board.</p> <p>Section 2.2-4012.1 of the Code of Virginia establishes the fast-track rulemaking process. This section requires the Board to have a 30-day public comment period, which was done, and provide an opportunity to object to the fast-track process, which was done. This section further states that, upon receipt of objections filed pursuant to the section, the Board must file notice of the objections with the Register of Regulations and “proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.” These steps were completed appropriately.</p> <p>The Board concurs that the use of “authorized VDH employee” may be confusing and has deleted the sentence containing that phrase from the text.</p>
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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	applicable		
18VAC160-20-10		The definitions of "direct supervisor" and "direct supervision" require that such supervision of an unlicensed individual indicates that the unlicensed individual must intend to apply for licensure.	The language is amended to state that a direct supervisor and direct supervision covers the supervision of an unlicensed individual whether that individual intends to apply for a license or not.
18VAC160-20-97.C.1.a		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>under the direct supervision</u> of an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience successfully installing systems as long as the firm he currently works for has the SDS specialty on the contractor license at the time he applies for the installer license.
18VAC160-20-97.C.1.b		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>as</u> an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience successfully installing systems as long as the firm, of which he is currently a member of responsible management, has the SDS specialty on the contractor license at the time he applies for the installer license.
	18VAC160-20-97.C.1.c		18VAC160-20-97.C.1.a and 18VAC160-20-97.C.1.b both require that the applicant work for, or be responsible management of, a firm currently licensed as a contractor with the SDS specialty at the time of his application for the individual installer license. However, it is possible that an individual gained experience installing systems for a firm that is no longer in business. The addition of this provision satisfies this situation by recognizing the individual's experience as qualifying for licensure even though he does not currently work for an SDS contractor or is not currently a member of responsible management in an SDS contractor firm.
	18 VAC 160-20-97.C.1.d		Preexisting language in 18 VAC 160-20-97 C.1.c was moved to 18 VAC 160-20-97. C.1.d
18VAC160-20-97.C.3.a		Requires that an applicant for an alternative installer license submit completion statements and operation permits from VDH as proof of experience for work done after June 30, 2009	The new language removes the requirement to provide operation permits because they do not indicate an applicant's experience. The new language specifies the two documents which will indicate an applicant's experience relevant to a sewage system installation. Both of

			the documents are public records maintained by and available from the local health department. The language is also changed to require certification from the appropriate qualified professionals in the septic installation industry.
18VAC160-20-97.C.3.b		Requires that an applicant for an alternative installer license submit completion statements and operation permits from VDH as proof of experience for work done on or before June 30, 2009	The new language removes the requirement to provide operation permits because they do not indicate an applicant's experience. The new language specifies the two documents which will indicate an applicant's experience relevant to a sewage system installation. Both of the documents required are maintained by and available from the local health department.
18VAC160-20-97.3.c		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>as</u> an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience installing systems as long as the firm, of which he is currently a member of responsible management, has the SDS specialty on the contractor license at the time which he applies for the installer license.
18VAC160-20-97.C.3.d		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>under the direct supervision</u> of an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience installing systems as long as the firm he currently works for has the SDS specialty on the contractor license at the time he applies for the installer license.
	18VAC160-20-97.C.3.e		18VAC160-20-97.C.3.c and 18VAC160-20-97.C.3.d both require that the applicant currently work for, or be responsible management of, a firm currently licensed with the SDS specialty. However, it is possible that an individual gained experience installing systems with an SDS firm, but the firm is no longer in business. The addition of this provision satisfies this situation by recognizing the individual's experience as qualifying for licensure even though he does not currently work for an SDS contractor or is not currently a member of responsible management in an SDS contractor firm.
18VAC160-20-97.C.3		Requires that an individual be listed on the contractor completion statement in order for that statement to verify his experience of	Contractor completion statements specify the contractor (firm) that completed the installation, not the individuals involved. The provision of the completion statement alone does not indicate if the applicant

		installing a particular sewage system	took part in the installation activities. The language is amended to require signed documentation from a supervisor of the installation firm where the applicant was employed. The documentation must verify that the individual was employed by the firm at the time of the installation and that he performed the installation.
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