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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC160-30
VAC Chapter title(s)	Waterworks and Wastewater Works Operators Licensing Regulations
Date this document prepared	January 22, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"ABC" means Association of Boards of Certification. This private entity administers a national examination for certification of waterworks and wastewater works operators that is accepted by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals to qualify an individual for licensure.

"CPE" means continuing professional education.

"DEQ" means Department of Environmental Quality.

"DPOR" means the Department of Professional and Occupational Regulation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The agency is the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (“Board”). Chapter 23 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for waterworks and wastewater works operators. Section 54.1-2301 of the Code of Virginia states, in part:

B. The Board shall examine waterworks and wastewater works 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.

In addition, § 54.1-201 of the Code of Virginia states, in part:

A. The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

5. 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. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No viable alternatives for achieving the purpose of the existing regulation could be determined. The regulation enables the Board to fulfill the statutory mandates established in 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 welfare of the citizens of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Dennis R. Wanless - D.R. Wanless & Associates LLC	The commenter suggests adding a definition of “operator-in-training” to 160-30-10, which establishes how an operator-in-training is designated, the qualifications such person should have, how long such person may work in that status, and the responsibilities and authority of such person. The commenter notes a definition appears in DEQ’s regulations.	<p>The Board thanks the commenter.</p> <p>As used in the existing regulations, “operator-in-training” is used to identify one of the types of experience that can qualify an applicant for licensure (the other being operator experience). Under the current regulations, it is not necessary to define “operator-in-training” as the plain language definition of the term is adequate to understand the Board’s regulations.</p> <p>The commenter further proposes to expand the regulatory provisions to include a definition along with qualifications, responsibilities, and other requirements for operators-in-training. The Board’s regulatory reach is limited by the authority granted to it by the General Assembly through the ratification of applicable laws. The Board’s authority is delineated in Chapter 23 of Title 54.1 of the Code of Virginia and does not include regulatory authority over operators-in-training.</p> <p>The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.</p>
Dennis R. Wanless - D.R. Wanless & Associates LLC	The commenter suggests the Board should consider eliminating language in 160-30-20 for an applicant to submit a new application after the expiration of the 12-month period for an applicant to complete the application process. Applicants are taking the examination multiple times and are sometimes exceeding the 12-month limit on the application.	<p>The Board thanks the commenter.</p> <p>Under 160-30-20, an applicant has 12 months from the date an application is received by the Board to complete the application process, and then has 12 months from the date of application approval to pass the board-approved examination. An applicant is not prohibited by regulation from taking the board-approved examination more than once. Once the examination is passed, the initial application fee also covers the initial license period as no additional fee is required until the license is renewed. Thus, an applicant could have up to two years from the date of application to obtain</p>

		<p>licensure by examination (12 months to complete the application and 12 months to take and pass the examination). In addition to being consistent with other regulatory programs within DPOR, the elimination of the 12 month period to take and pass an examination would mean 1) an indefinite period of time to take and pass the examination, or 2) another, longer time period to take and pass the examination which may still not be enough time for some applicants to be successful depending on their competency and exam preparation.</p> <p>The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.</p>
<p>Dennis R. Wanless - D.R. Wanless & Associates LLC</p>	<p>The commenter indicated that if the Board permits applicants who have passed an ABC examination in another jurisdiction to come to Virginia to operate in the same category and classification without having passed a Board-approved (Virginia ABC) examination in Virginia to become licensed if they meet equivalent experience requirements, then the Board should revise 160-30-80 to so state.</p>	<p>The Board thanks the commenter.</p> <p>The ABC examination is a national examination accepted by the Board to qualify an individual for licensure in Virginia. An applicant who holds a valid license from another jurisdiction who has previously passed the national examination would not be required to pass an additional examination in Virginia, as the applicant has already passed the examination that is approved by the Board.</p> <p>The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.</p>
<p>Dennis R. Wanless - D.R. Wanless & Associates LLC</p>	<p>The commenter indicated he understands the intent of subsection E of 160-30-90 regarding exclusion of nonoperating duties toward experience for licensure, specifically regarding only collection system operation, but believes it would be more equitable and sensible to allow some experience credit for so-called "non-operating duties" inasmuch as such duties are</p>	<p>The Board thanks the commenter.</p> <p>The Board believes experience limited to solely nonoperating duties are not sufficient to demonstrate qualification for licensure. Per the wording of the referenced subsection, an applicant's experience is not precluded from consideration if his job duties include the listed items; experience that is limited to the listed items will not qualify an applicant for licensure.</p>

	<p>part of the job description of many wastewater operators and contribute to knowledge and understanding of the profession.</p>	<p>The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.</p>
<p>Dennis R. Wanless - D.R. Wanless & Associates LLC</p>	<p>The commenter suggests the Board should clarify at 160-30-200 and 160-30-210 that the Board does not approve providers for CPE courses, and the Board does not approve individual CPE courses. This is an area of long-running and ongoing confusion that is being exploited by some online education providers for marketing purposes.</p>	<p>The Board thanks the commenter.</p> <p>Sections 160-30-200 and 160-30-210 state the topics that are acceptable for CPE. The Board does not approve CPE courses.</p> <p>Based on the comment, the suggestion that 160-30-200 and 160-30-210 need clarification is that some providers are exploiting the Board's acceptance of CPE instead of approval of CPE for marketing purposes. This does not appear to be an issue with confusing language in the regulations but instead a tactic used by some providers of suggesting a course is "approved" by the Board when, in fact, it may have been accepted by the Board but has not been approved. When specific circumstances are brought to the attention of Board staff, staff will contact such providers to direct that the incorrect or misrepresentative language be amended. However, this does not appear to be an issue of protecting the health, safety, and welfare of the public.</p> <p>One of the responsibilities of the Board is to make the regulations as least burdensome and cost-effective as possible while protecting the public. The harm the commenter describes is beyond the Board's regulatory authority to address, as the Board does not approve CPE courses or course providers. Amending the regulatory scheme to require pre-approval of all CPE training providers, and presumably CPE training courses, would limit the options for licensees seeking CPE training to only those who have gone through the process of obtaining formal approval by the Board. In addition, the increased workload associated with processing CPE provider/course applications, maintaining such approvals, taking appropriate action against such entities for not complying with the regulations, and other administrative processes that would be necessary, will</p>

		<p>likely result in additional expenses being incurred by the Board. This would mean the implementation of application and/or renewal fees for training providers/courses and potentially increased costs to licensees and applicants through application and renewal fees.</p> <p>The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.</p>
<p>Dennis R. Wanless - D.R. Wanless & Associates LLC</p>	<p>The Board should provide greater clarity in the regulations, where appropriate, regarding the question of reciprocity.</p>	<p>The Board thanks the commenter.</p> <p>Because of the vast disparity in regulating waterworks and wastewater works licensees in other jurisdictions, the language in the current regulations allows applicants with licenses in other jurisdictions to have their qualifications evaluated on a case-by-case basis to determine the areas of substantial equivalency. Since each jurisdiction may have different terms for classifications, different treatment processes for any such classifications, varying licensing schemes, and a multitude of entry options, having specific provisions for reciprocity could have the unintended consequences of limiting or excluding licenses from other jurisdictions licensing provisions.</p> <p>The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.</p>

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The General Assembly has charged the Board with the responsibility for regulating those who operate waterworks or wastewater works by requiring the Board examine such individuals and issue licenses to those that have demonstrated sufficient competency to operate and supervise the operation of waterworks or wastewater works, while protecting the public health, welfare, and property and conserving

and protecting the water resources of the Commonwealth. Waterworks or wastewater works that are not properly operated may pose a risk to the public health. The regulation helps fulfill this mandate from the General Assembly by ensuring that those who receive a license from the Board meet minimum requirements for education and experience in order to operate and supervise the operation of waterworks or wastewater works.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation contains the requirements for licensure of waterworks and wastewater works operators. The regulation is necessary to interpret and apply the requirements imposed upon the Board by Chapter 23 of the Code of Virginia, The regulation is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost effective manner.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

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

The regulation is necessary to interpret and apply the requirements imposed upon the Board by Chapter 23 of the Code of Virginia, and to protect the public welfare, in part by ensuring those who operate and supervise the operation of waterworks or wastewater works meet minimum requirements for education and experience, and competence. The regulation is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost effective manner.

Based on the comments received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. However, the decision to retain a regulation in its current form does not prevent the Board from conducting review or amendment of the regulation in the future.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the 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, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Waterworks and wastewater works operator licenses are issued to individuals. These individuals do not fall within the meaning of the term “small business” as defined in § 2.2-4007.1.

Section 54.1-2301 of the Code of Virginia mandates the Board examine waterworks and wastewater works operators and issue licenses in order to protect the public health, welfare and property and conserving and protecting the water resources of the Commonwealth. 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 Board provides protection to the public welfare of the citizens of the Commonwealth by ensuring that those who receive a license from the Board meet minimum requirements for education and experience, and competency in order to operate and supervise the operation of waterworks or wastewater works.

The regulation is clearly written, easily understandable, and does not overlap, duplicate or conflict with federal or state law or regulation. Based on the comments received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. However, the decision to retain a regulation in its current form does not prevent the Board from conducting review or amendment of the regulation in the future.

This is the first periodic review of this regulation since it became effective in 2017. On January 14, 2021, the Board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

