

**VIRGINIA BOARD FOR
WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE
SEWAGE SYSTEM PROFESSIONALS**

MINUTES OF MEETING

The Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals met on October 3, 2012, at the offices of the Department of Professional and Occupational Regulation (DPOR), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, Virginia 23233.

The following members of the Board were present:

John Aulbach, II (arrived at 9:16 a.m.)
Frank L. Davis, Jr.
Kornell Davis, Jr.
Barry T. Dunkley
D. Perry Greene
Kristen Lentz
E. Brooke Philpy
Gary Schafran
D. Wayne Staples
Ronald R. Thomas

Board member Michelle Ann Magrino was not in attendance.

DPOR staff present for all or part of the meeting included:

Gordon Dixon, Director
Nick Christner, Deputy Director for Licensing, Investigations, and Compliance
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Trisha L. Henshaw, Executive Director
Doug Schroder, Director of Adjudication
Michele Atkinson, Board Administrator
Thomas K. Perry, Property Registration Administrator
Betty C. Jones, Administrative Assistant

Elizabeth Peay from the Office of the Attorney General was present.

Finding a quorum of the Board present, Mr. Philpy, Chair, called **Call to Order** the meeting to order at 9:03 a.m.

Mr. Philpy welcomed Trisha Henshaw and requested Board members introduce themselves. Ms. Henshaw introduced staff members. **Introduction of Staff and Board Members**

Mr. K. Davis moved to approve the agenda. Mr. Dunkley seconded the motion which was unanimously approved by: F. Davis, K. Davis, Dunkley, Greene, Lentz, Philpy, Schafran, Staples, and **Approval of Agenda**

Thomas.

Mr. K. Davis moved that the Board approve the minutes of the July 10, 2012, meeting. Mr. F. Davis seconded the motion which was approved by: F. Davis, K. Davis, Dunkley, Greene, Lentz, Philpy, Staples, and Thomas. Mr. Schafran abstained from voting.

Approval of Minutes

Mr. Philpy opened the floor for public comment. Mr. Bob Marshall, an Alternative Onsite Soil Evaluator, addressed the Board during the Public Comment Period. Mr. Marshall inquired about the implementation of the new statutory provisions of HB609 requiring regulants to disclose their licenses upon request. He indicated that regulants are not signing their work. He also had concerns about possible conflicts of interest.

Public Comment Period

Mr. Jim Slusser, an Alternative Onsite Soil Evaluator, expressed his concerns about the incomplete work products and design authority of contractors. Mr. Slusser wants to ensure that the public safety and welfare of citizens are being protected.

Mr. Aulbach arrived at 9:16 a.m.

Arrival of Board Member

Mr. Tony Bible, an Alternative Onsite Soil Evaluator, expressed his concerns regarding the Virginia Department of Health's (VDH) policy related to review and approval of permit applications specifically when such review involves the regulant's own work. In essence, Mr. Bible believes VDH is acting as both the regulators and the regulants. This appears to be a conflict of interest which should be properly disclosed.

Public Comment Period

The Board discussed a memorandum from Ms. Henshaw regarding a question from the Virginia Department of Health (VDH) regarding licensure requirements for experimental devices. The correspondence provided three scenarios wherein there is a fully compliant, permitted and legally operated treatment system that is properly treating and disposing of the effluent (or producing potable water). An experimental device is being tested by intercepting the flow at some point in the process flow depending on the design of the experimental unit. Flow is treated through the experimental device and then returned to the permitted treatment system to complete the treatment and disposal process.

Discussion of Question from Virginia Department of Health (VDH) Regarding Licensure Requirements for Experimental Devices

In the first example, a 45,000 gallons per day treatment facility is permitted by the Department of Environmental Quality and has a Class IV licensed wastewater operator requirement. An experimental 5 stage Bardenpho membrane bioreactor (MBR) is

tested at the facility. The raw influent is intercepted, treated through the MBR and then returned to the permitted treatment system at the clarifier. Only a portion of the flow is diverted to the MBR.

In the second example, a single family home has a properly permitted conventional septic tank drainfield system. An experimental device intercepts flow from the septic tank, treats it to some level, and then returns the treated effluent to the septic tank.

Finally, in the third example, a university researcher sets up a laboratory pilot scale treatment system and intercepts wastewater from a gravity sewer. The wastewater is treated through the pilot scale system and then returned to the sewer.

For each of the scenarios, the Board was asked to provide guidance on the operator licensure requirements. After discussion, Mr. Dunkley made a motion to accept the following response as recommended by staff.

Based on the scenarios provided in the correspondence from VDH, for the first example, it would appear that a waterworks or wastewater works facility would need an operator with a class of license appropriate to the classification of the facility, regardless of the device incorporated into the treatment works system. The existing system would have an operator, who would be responsible for the operations of the wastewater works, and the addition of an experimental device would only affect the licensure of individuals involved if it were determined that the classification of the facility has changed.

For the second example, the definitions of “alternative onsite sewage system” and “conventional onsite sewage system” both define the system as “a treatment works . . .”. The definition of treatment works means “any **device** or system used in the storage, treatment, disposal or reclamation of sewage . . . including, but not limited to, pumping, power and other equipment and appurtenances, septic tanks and any works, including land, that are or will be (i) **an integral part of the treatment process . . .**” [emphasis added]. Therefore, the first determination would be whether the experimental device would fall within the definition of “treatment works”.

If so, the definitions of “alternative onsite sewage system” and “conventional onsite sewage system” would be used to determine the type of system, which would then be used by the Board to determine the type of operator license necessary. As to whether or

not a licensed operator would be required, pursuant to the definitions of “alternative onsite sewage system operator” and “conventional onsite sewage system operator”, an operator is one who “operates and maintains” the onsite sewage system. Further, the definition of “maintain” in 18 VAC 160-20-10 of the Board’s regulations includes “performing adjustments to equipment and controls”. If the person responsible for the experimental device “operates or maintains” the onsite sewage system (to include the experimental device), then the appropriate operator license would be required.

As to the third example, it appears that the laboratory pilot scale treatment system does not meet the definition of “wastewater works” in the Board’s regulations, and the university researcher does not meet the definitions of “operator.” Therefore, a license would not be required in the example provided.

Mr. Staples seconded the motion which was unanimously approved by: Aulbach, F. Davis, K. Davis, Dunkley, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

Ms. Henshaw indicated she would prepare a response to the three scenarios provided in the correspondence from VDH.

Ms. Henshaw gave an update on the current status of the regulatory review process for the Waterworks and Wastewater Works Operators and Onsite Sewage Systems Professionals Regulations. The fast-track regulatory action amending the definitions related to supervision and entry requirements for installers has completed the executive branch review. The amendments to the regulations will be published on October 8, 2012, which will also begin a 30-day public comment period, and will become effective on December 1, 2012.

**Update on
Regulatory Activity**

The following resolution was presented for consideration by the Board.

**Consideration of
Resolution for
Service**

RESOLUTION TO

DAVID DICK

WHEREAS, **David Dick** has faithfully and diligently served the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals from 1993 to 2012;

WHEREAS, **David Dick** has devoted generously of his time, talent and leadership to the Board;

WHEREAS, **David Dick** has endeavored at all times to render assistance and advice to the Board with fairness and good judgement in the best interest of the citizens of the Commonwealth; and

WHEREAS the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals this third day of October 2012, that **David Dick** be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Mr. Philpy made a motion to adopt the resolution. Mr. Greene seconded the motion which was unanimously approved by: Aulbach, F. Davis, K. Davis, Dunkley, Greene, Lentz, Philpy, Schafran, Staples, and Thomas. The Board extended its appreciation to Mr. Dick for his service to the Board.

The Board recessed for a break at 9:48 a.m. and reconvened at 10:03 a.m.

Break

Mr. Philpy welcomed and introduced new Board member, John Aulbach, II, who was appointed to serve as the Department of Health designee on the Board.

Introduce New Board Member

Per Mr. Philpy's request, Ms. Henshaw discussed concerns that have arisen regarding standards of conduct for licensees of the Board. While many issues presented would not be appropriate for the Board's regulations, as they do not fall under the purview of this Board, the Board could choose to conduct a general review of its standards.

Discussion of AOSE Concerns

Mr. Courtney suggested that the Board have a meeting with VDH staff and conduct further research before considering regulatory review to discuss issues that have arisen pertaining to onsite sewage

system operators since the Board began regulating them. Staff will prepare for further discussion of this issue at its meeting in January.

Mr. Courtney provided training to the Board members on their roles and responsibilities.

Board Roles and Responsibilities Training

Mr. Schroder provided an overview of the complaint process for the programs housed within the Department. Mr. Schroder also provided general information and statistics regarding the following sections: Office of the Common Interest Community Ombudsman, Office of Fair Housing, Complaint Analysis and Resolution, Alternative Dispute Resolution, Investigations, and Adjudication.

Complaint Process and Compliance Training

The following meeting dates have been scheduled:

Future Meeting Dates

Thursday, January 10, 2013
Thursday, April 4, 2013
Tuesday, July 9, 2013
Thursday, October 10, 2013

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

Conflict of Interest Forms and Travel Vouchers

There being no further business, the meeting was adjourned at 11:16 a.m.

Adjournment

E. Brooke Philpy, Chair

Gordon Dixon, Secretary