

**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 July 24, 2014, at the offices of the Department of Professional and Occupational Regulation (DPOR), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, Virginia 23233.

The following members of the Board were present:

Kornell Davis, Jr., Chair
Barry T. Dunkley
Thomas Fore
D. Perry Greene
Kristen Lentz (arrived at 9:10 a.m.)
Michelle Ann Magrino
E. Brooke Philpy
D. Wayne Staples

Board members John Aulbach, II, Gary Schafran, and Ronald Thomas were not present at the meeting.

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

Jay W. DeBoer, Director
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Jeff Waite, Budget and Financial Services Manager
Trisha L. Henshaw, Executive Director
Eric Olson, Executive Director, Board for Contractors
Kristin Marie Clay, Board 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. Davis, Chair, called the meeting to order at 9:00 a.m.	<u>Call to Order</u>
Ms. Henshaw advised the Board of the emergency evacuation procedures.	<u>Emergency Evacuation Procedures</u>
Mr. Dunkley moved to approve the revised agenda. Mr. Staples seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Magrino, Philpy, and Staples.	<u>Approval of Agenda</u>
Ms. Henshaw announced that Jay DeBoer, who was Director of	<u>Introduction of</u>

<p>DPOR between 2006 and 2010, has been appointed as the new Director of DPOR and will be in attendance later in the meeting. The Board welcomed back the newest Board member, Thomas Fore, who was appointed to serve as a waterworks operator representative.</p>	<p><u>Director and Board Member</u></p>
<p>Mr. Greene moved that the Board approve the minutes of the April 10, 2014, Board meeting. Mr. Dunkley seconded the motion which was unanimously approved by: Davis, Dunkley, Greene, Magrino, Philpy, and Staples. Mr. Fore abstained from voting.</p>	<p><u>Approval of Minutes</u></p>
<p>Mr. Davis opened the floor for public comment. No members of the public present requested to speak.</p>	<p><u>Public Comment Period</u></p>
<p>In the matter of File Number 2014-02851, Donald Bland, Jr., the Board members reviewed the record which consisted of the application file, transcript, and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Bland was present and addressed the Board. He stated he respects the laws and regulations in his field and has friends that rely on him and respect him. Ms. Alicia Houchins, Mr. Bland's aunt, was present and addressed the Board. She thanked the Board for giving her the opportunity to speak. She stated she would not have invested in his business if she had not seen a change in him. Mr. Staples moved to amend the Summary of the Presiding Officer to correct that Mr. Bland does not hold an interim onsite sewage system installer license and accept the recommendation of the Presiding Officer and approve Mr. Bland's application for a conventional onsite sewage system installer license. Mr. Dunkley seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Magrino, Philpy, and Staples.</p>	<p><u>File Number 2014-02851, Donald Bland, Jr.</u></p>
<p>Mr. DeBoer arrived at the meeting and Ms. Henshaw introduced him to the Board. The Board members welcomed Mr. DeBoer back to DPOR.</p>	<p><u>Introduce Director</u></p>
<p>In the matter of File Number 2014-02572, Talib-Diyn Aziz, the Board members reviewed the record which consisted of the application file, transcript, and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Aziz was present and addressed the Board. He stated that Mr. Bland was an example that people can change. Mr. Aziz stated he has changed, and the apprenticeship program will give him opportunities and he hopes to be able to continue, and move forward with his life. Mr. Dunkley moved to accept the recommendation of the Presiding Officer and approve Mr. Aziz's</p>	<p><u>File Number 2014-02572, Talib-Diyn Aziz</u></p>

<p>class 4 wastewater works operator application and issue Mr. Aziz's license as a class 4 wastewater works operator contingent upon completion of the Virginia Department of Corrections (DOC) wastewater works operator class 4 Apprenticeship Program, meeting all entry requirements contained in the Board's regulations, and passing the applicable examination. Mr. Fore seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Magrino, Philpy, and Staples.</p>	
<p>Ms. Lentz arrived at 9:10 a.m.</p>	<p><u>Arrival of Board Member</u></p>
<p>In the matter of File Number 2014-02480, Basil Barnes-Gadsden, the Board members reviewed the record which consisted of the application file, transcript, and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Barnes-Gadsden was not present. Ms. Lentz moved to accept the recommendation of the Presiding Officer and approve Mr. Barnes-Gadsden's class 4 wastewater works operator application and issue Mr. Barnes-Gadsden's license as a class 4 wastewater works operator contingent upon completion of the DOC wastewater works operator class 4 Apprenticeship Program, meeting all entry requirements contained in the Board's regulations, and passing the applicable examination. Mr. Staples seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.</p>	<p><u>File Number 2014-02480, Basil Barnes-Gadsden</u></p>
<p>In the matter of File Number 2014-03057, Julian Edwards, the Board members reviewed the record which consisted of the application file, transcript, and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Edwards' was not present. Mr. Dunkley moved to accept the recommendation of the Presiding Officer and approve Mr. Edwards' class 4 wastewater works operator application and issue Mr. Edwards' license as a class 4 wastewater works operator contingent upon completion of the DOC wastewater works operator class 4 Apprenticeship Program, meeting all entry requirements contained in the Board's regulations, and passing the applicable examination. Mr. Greene seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.</p>	<p><u>File Number 2014-03057, Julian Edwards</u></p>
<p>In the matter of File Number 2014-03058, Larry Wallace, the Board members reviewed the record which consisted of the application file, transcript, and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Wallace was not present. Mr. Staples</p>	<p><u>File Number 2014-03058, Larry Wallace</u></p>

<p>moved to accept the recommendation of the Presiding Officer and approve Mr. Wallace's class 4 wastewater works operator application and issue Mr. Wallace's license as a class 4 wastewater works operator contingent upon completion of the DOC wastewater works operator class 4 Apprenticeship Program, meeting all entry requirements contained in the Board's regulations, and passing the applicable examination. Mr. Dunkley seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.</p>	
<p>In the matter of File Number 2014-03235, Phillip Suflita, the Board members reviewed the record which consisted of the application file, transcript, and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Suflita was not present. Mr. Greene moved to accept the recommendation of the Presiding Officer and approve Mr. Suflita's application for a class 4 wastewater works operator license. Mr. Dunkley seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.</p>	<p><u>File Number 2014-03235, Phillip Suflita</u></p>
<p>Mr. Robbie Jones, Plant Supervisor with the Nottoway Correctional Center of the DOC, provided an overview of the wastewater treatment plant operator apprenticeship program for offenders. This program will allow qualified offenders the opportunity to obtain a class 4 wastewater works operator license.</p> <p>Mr. Graham Jett, Utility Plant Manager with Haynesville Correctional Center of the DOC, addressed the Board and looks forward to helping Mr. Jones with the program.</p>	<p><u>Discussion of Department of Corrections Wastewater Apprenticeship Program</u></p>
<p>Ms. Henshaw provided the Board a copy of the draft Memorandum of Understanding (MOU) between DPOR and DOC. While the MOU is currently pending signature, it is expected to be ratified in the near future. The MOU provides the procedures to be followed by each agency for applicants proceeding through the DOC Wastewater Apprenticeship program.</p>	<p><u>Department of Corrections Apprenticeship Memorandum of Understanding</u></p>
<p>Ms. Henshaw gave an update on the current status of the regulatory review processes for the Board's Regulations.</p> <p>The standard regulatory process action amending the definitions related to supervision and entry requirements for installers are in final stage currently undergoing review by the Governor's office.</p> <p>The proposed amendment made pursuant to the Governor's Regulatory Reform Initiative are in final stage currently undergoing</p>	<p><u>Update on Regulatory Review Processes</u></p>

<p>review by the Governor's office.</p> <p>The proposed fee adjustment is currently in the Notice of Intended Regulatory Action (NOIRA) stage and has completed executive branch review. A 30-day public comment period began April 7, 2014 and ended May 7, 2014.</p> <p>The General Review is currently in the Notice of Intended Regulatory Action (NOIRA) stage and undergoing executive branch review.</p>	
<p>Ms. Henshaw provided the Board with a revised handout containing proposed fee schedules for consideration by the Board. The schedules included the following proposals:</p> <ul style="list-style-type: none"> • Proposal A - Application fees are higher than the renewal fees; • Proposal B - Application fees are lower than the renewal fees; and • Proposal C – Application fees are equal to the renewal fees. <p>Mr. Fore made a motion to adopt Proposal C. Mr. Greene seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.</p>	<p><u>Adopt Proposed Fee Adjustment Regulations</u></p>
<p>Ms. Henshaw introduced Ashley Colwell, Anthony Sharpenstein, and Ashton Davis, three contract licensing specialists, to the Board.</p>	<p><u>Introduce Staff</u></p>
<p>Mr. Olson, Executive Director of the Board for Contractors provided an update on applications for sewage disposal system (SDS) contractors. Previously, the Board for Contractors notified all contractors that held the SDS specialty that their qualified individuals would be required to obtain an installer's license from the Board or the SDS specialty would be removed from their license. Based on a recent review of the Board for Contractors' records, there are approximately 800 contractors who do not have a licensed onsite sewage system installer as a qualified individual. On August 1, 2014, the Board for Contractors will mail a letter giving installers a final 90-day period to come into compliance or SDS will be dropped as a specialty if a licensed installer is not listed as the qualified individual. If SDS is the only specialty and a licensed installer is not listed as the qualified individual, then the contractor license will be terminated.</p>	<p><u>Discussion of SDS Contractor Licensing</u></p>
<p>The Board recessed for a break at 10:10 a.m. and reconvened at 10:26 a.m.</p>	<p><u>Break</u></p>

<p>Ms. Henshaw provided an outline of items to cover in the General Review of the Board's Regulations. Some of the topic areas are: separate waterworks and wastewater works operators regulations from onsite sewage system professionals regulations; review and revise definitions; entry requirements; renewal; classification requirements; standards of practice; approval of training; and other items as necessary. Staff will provide a preliminary draft for the Board's consideration at the September Board meeting. The Board members were asked to submit any ideas, comments, or suggestions to Ms. Henshaw or Ms. Clay for discussion at the next Board meeting.</p>	<p><u>Discuss General Review of Regulations</u></p>
<p>The Board was provided with a Memorandum from Ms. Henshaw requesting guidance regarding onsite sewage system operators.</p> <p>Board staff has received numerous inquiries from applicants regarding the necessity of an examination for <i>conventional and alternative</i> onsite sewage system <u>operators</u>, especially in light of legislative exceptions that have been made for <i>conventional and alternative</i> onsite sewage system <u>installers</u>.</p> <p>Specifically, the 2012 Session of the General Assembly resulted in the passage of House Bill 1262 and Senate Bill 662, which amended § 54.1-2301 of the <i>Code of Virginia</i> until June 30, 2016. This amendment allows a <i>conventional installer</i> to qualify for licensure without examination upon demonstrating to the Board that the applicant has been actively engaged in performing the duties of a conventional installer for at least eight of the preceding 12 years. In addition, the 2014 Session of the General Assembly resulted in the passage of Senate Bill 657 which allows a six-month extension to an <i>alternative installer</i> license, if specific requirements are met, in order to allow additional time to take and pass the examination. No similar exceptions have been made for either <i>conventional</i> or <i>alternative operators</i> although both appear to be similarly situated.</p> <p>Governor McAuliffe issued Executive Order 17 on June 30, 2014. This gubernatorial directive provides the policies and procedures to be utilized by state agencies and policy boards for the establishment and revision of regulations. Specifically, EO 17 states, in part, that "all regulatory activity should be undertaken with the least possible intrusion into the lives of the citizens of the Commonwealth and be necessary to protect the public health, safety, and welfare."</p> <p>Potential and current applicants, some legislators, and other members of the public have raised questions about whether an examination is reasonable and justified for <i>conventional</i> (and, in</p>	<p><u>Discuss Request for Guidance Regarding Onsite Sewage System Operators</u></p>

some cases, *alternative*) onsite sewage system operators, specifically those whose primary responsibility is pumping out the system. When establishing the regulatory program and creating the Board, the General Assembly did not include a statutory provision in Chapter 23 of Title 54.1 of the *Code* requiring an examination for licensure; all examinations required for initial licensure are established by the Board's regulations.

Based on the number of inquiries and complaints received by the Board office, as well as EO 17 and the likelihood of continued legislative attempts to address constituent concerns by General Assembly members, staff requests that the Board consider establishing a guidance document providing for alternatives to the examination for *conventional* onsite sewage system operators. Such alternatives might include consideration of specific experience and/or training in lieu of the examination.

After discussion, Mr. Fore made a motion that the Board adopt a guidance document to waive the examination required pursuant to 18 VAC 160-20-76.E.1 and 18 VAC 160-20-98.C.1 of the Board's regulations for conventional onsite sewage system operator applicants contingent on the following requirements being met:

1. The applicant was issued an interim conventional or alternative onsite sewage system operator license;
2. The applicant submits and the Board receives an application for conventional onsite sewage system operator by examination waiver and the applicable fee to the Board office;
3. The applicant provides documentation of having met the continuing education requirements of 18 VAC 160-20-98.B and 18 VAC 160-20-109 of the Board's regulations.
4. The applicant provides acceptable documentation of having been actively engaged in the operation and maintenance of conventional and/or alternative onsite sewage systems for four and one-half (4 ½) years. Such experience must be verified by one or more of the following:
 - a. VDH Authorized Onsite Soil Evaluator (AOSE) for work performed prior to July 1, 2009;
 - b. Licensed (interim or non-interim) conventional or alternative onsite soil evaluator;
 - c. Licensed (interim or non-interim) conventional or alternative onsite sewage system operator; or

<p>d. Virginia licensed professional engineer;</p> <p>5. The applicant meets all other requirements of the Board's regulations.</p> <p>An applicant who does not meet the requirements of this policy is not eligible for waiver of the conventional onsite sewage system operator examination.</p> <p>Mr. Dunkley seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.</p>	
<p>The Board was provided with a Memorandum from Ms. Henshaw regarding experience verification exception for sole proprietors.</p> <p>Board Regulation 18 VAC 160-20-98.C.2 provides the specific entry requirements for alternative onsite sewage system operators. The regulation requires that applicants for licensure as alternative onsite sewage system operators obtain experience "working under the direct supervision of an alternative onsite sewage system operator licensee or an interim alternative onsite sewage system operator licensee."</p> <p>The April 12, 2011, Board meeting minutes indicate that the Board provided an interpretation whereby "a licensed interim alternative onsite sewage system operator who is self-employed (sole proprietor) and has met all other eligibility requirements (education and months of full-time experience) can be approved to sit for the alternative onsite sewage system operator exam provided verification of the individual's work experience is received from an independent, third-party who has first-hand knowledge of the licensed interim alternative onsite sewage system operator's experience."</p> <p>Applicants, regulants, and legislators have contacted Board staff to express concern and frustration that a particular population – sole proprietors – have been provided with an alternative method for verifying experience that is not afforded to other applicants who are employed in other types of entities. After reviewing the Board policy in conjunction with practices and processes utilized for boards within DPOR, Board staff conferred with Board Counsel and confirmed the following:</p> <p>The legal form in which an individual conducts business cannot be the basis for an exemption or privilege in the credentialing processes at DPOR.</p>	<p><u>Discuss</u> <u>Memorandum</u> <u>Regarding</u> <u>Experience</u> <u>Verification</u> <u>Exception for Sole</u> <u>Proprietors</u></p>

Historically, DPOR has only required that any business structure be appropriately registered in its own name by the State Corporation Commission. Once so registered, it is entitled to all appropriate consideration by DPOR and its Boards.

Asserting a preference for a form of doing business, such as a sole proprietorship, is not permissible in a licensing or regulatory scheme unless the form of doing business itself is relevant to protecting the public's health, safety and welfare.

After discussion, Mr. Dunkley made a motion that the Board adopt a guidance document that rescinds the previous policy allowing third-party verification of experience for licensed interim alternative onsite sewage system operators who are sole proprietors and are applying for licensure as alternative onsite sewage system operators. The Board institutes the following policy:

An applicant for an alternative onsite sewage system operator license who has met all other eligibility requirements may be approved to sit for the alternative onsite sewage system operator examination provided verification of the requisite experience engaged in operation and maintenance of alternative onsite sewage systems is verified by one or more of the following:

- a. VDH Authorized Onsite Soil Evaluator (AOSE) for work performed prior to July 1, 2009;
- b. Licensed (interim or non-interim) alternative onsite soil evaluator;
- c. Licensed (interim or non-interim) alternative onsite sewage system operator; or
- d. Virginia licensed professional engineer.

Additional information may be requested from the applicant to confirm the requisite experience has been obtained and all eligibility criteria has been met.

Ms. Lentz seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.

<p>The Board was provided with a Memorandum from Ms. Henshaw to consider requesting legal advice regarding the mandate for licensing conventional onsite sewage system installers and operators.</p> <p>After discussion, Mr. Fore made a motion that the Board request legal advice on this matter. Ms. Lentz seconded the motion which was unanimously approved by: Davis, Dunkley, Fore, Greene, Lentz, Magrino, Philpy, and Staples.</p>	<p><u>Consider Request for Legal Advice</u></p>
<p>Ms. Henshaw provided the Board a copy of the quarterly examination statistics report for informational purposes.</p>	<p><u>Quarterly Examination Statistics Report</u></p>
<p>Ms. Henshaw provided an update on the onsite sewage system professionals exam review process. A meeting was scheduled to take place next week. The subject matter experts to participate in the exam review process included: seven onsite soil evaluators, zero installers, and one operator. The meeting was postponed and staff will reschedule the exam review because there needs to be adequate and qualified representation in all areas. Ms. Henshaw asked the Board members to provide names of licensed operators and installers to participate in the exam review process.</p>	<p><u>Update on WWOSSP Examination</u></p>
<p>The following meeting dates have been scheduled:</p> <ul style="list-style-type: none"> • Tuesday, September 16, 2014 • Thursday, October 16, 2014 • Thursday, January 29, 2015 • Thursday, April 16, 2015 • Thursday, July 23, 2015 • Thursday, October 15, 2015 	<p><u>Future Meeting Dates</u></p>
<p>The Board members were reminded to complete their conflict of interest forms and travel vouchers.</p>	<p><u>Conflict of Interest Forms and Travel Vouchers</u></p>
<p>There being no further business, the meeting was adjourned at 11:46 a.m.</p>	<p><u>Adjourn</u></p>

Kornell R. Davis, Jr., Chair

Jay W. DeBoer, Secretary

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