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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC160-20, 18 VAC160-30, 18VAC 160-40
<b>Regulation title(s)</b>	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
<b>Action title</b>	General Review
<b>Date this document prepared</b>	June 29, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The regulations have not undergone substantial revision since 2009, when amended to incorporate the licensure of onsite sewage system professionals. Following a thorough review of the regulations, the Board determined the best course of action to ensure clarity, proper definition and usage of terms, and adequate regulations to ensure minimum competency of those entering the regulated professions, is to repeal the existing regulations. The result is the creation of two new chapters: 18 VAC 160-30 for the licensing regulations for waterworks and wastewater works operators, and 18 VAC 160-40 for the licensing regulations for onsite sewage system professionals.

The proposed language was developed by the Board to ensure the regulations complement the need to ensure that individuals seeking licensure are minimally competent, regulate in a manner that is minimally

burdensome on the regulated population while still protecting the public, and also that the regulations reflect current procedures and policies of the Department of Professional and Occupational Regulation.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

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No acronyms or technical terms were identified that were not defined in the “Definitions” section of the regulations.

## 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.*

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§ 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.

§ 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.”

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.*

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The regulations have not undergone a thorough and complete review since the inclusion of the onsite sewage system professional regulations in 2009. A thorough review was necessary to ensure that the regulation complements the current standards and practices of the profession and ancillary agencies involved in the regulation of waterworks, wastewater works, and onsite sewage systems, provides minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department. The regulations were developed to achieve their intended objective in the most efficient, cost-effective manner, and are clearly written and understandable.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.*

- Repeal the Board’s current regulations
- Add new regulations that govern the practice of waterworks and wastewater works operators to ensure minimally-qualified individuals meet requirements for licensure that are more aligned with current true-to-life education and experience of new and renewing applicants and updating certain standards of practice as they relate to the industry.
- Add new regulations that govern the practice of onsite sewage system operators, onsite sewage system installers, and onsite soil evaluators to ensure minimally-qualified individuals meet requirements for licensure that are more aligned with current true-to-life education and experience of new and renewing applicants and updating certain standards of practice as they relate to the industry.

## 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.*

The primary advantage to the public is that the revisions will improve the clarity of the regulations, ensure consistency with current board practices and legal requirements, and standards of practice in the industry, all to better protect the health, safety, and welfare of citizens of the Commonwealth.

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance that Virginia places on ensuring the regulations are the least burdensome but also provide protection to the citizens of the Commonwealth. No disadvantages to the Commonwealth could be identified.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are*

*no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements that exceed applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no particularly affected localities.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals., Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond Virginia 23233; email:Waterwasteoper@dpor.virginia.gov; fax: 1-866-350-5354. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going</b></p>	<p>No additional costs are expected as a result of the proposed amended regulations. There is a potential for additional revenue however the amount is indeterminate. The clarified regulations</p>
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<p><b>expenditures</b></p>	<p>may result in additional license applicants however there is no satisfactory method to determine the number of additional applicants.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>Localities would only incur costs if they elect to pay the license application fee for any of their employees. The fee is \$100 per applicant.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Current licensees and potential applicants working as waterworks operators, wastewater works operators, or onsite sewage system professionals are likely to be affected by the amended regulations. Businesses that elect to pay license fees for their employees may be affected.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As of June 1, there are 4,472 licensed Waterworks and Wastewater Works Operators and 1,182 licensed Onsite Sewage System Professionals. No estimate of the number of potential applicants is available. No estimate is available for the number of businesses (including small businesses) that elect to pay their employees’ license fees.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b> a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Currently unlicensed professionals that are required to apply would incur a \$100 application fee. The applicants may be required to take an examination at a cost of \$85 as determined by the exam vendor. a) There are no costs required for small businesses since the licensure program is for individuals only. There is no affect and therefore no costs related to the development of real estate due to the amended regulations.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The beneficial impact is the clarification of the regulations designed to protect the health, safety, and welfare of Virginia citizens.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

While the licensure of waterworks and wastewater works operators and onsite sewage system professionals is mandatory per §§ 54.1-2301.B and D, the contents of the regulation is determined by the board within the constraints provided by law. The board will consider reasonable alternatives to existing requirements which do not compromise the publics’ health, safety or welfare during the general review states in part, the Board shall examine waterworks and wastewater works operators and issue licenses in specific operator classifications which shall 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.

Section 54.1-2301.D states in part that the Board, in consultation with the Board for Health, shall adopt regulations which shall include but not be limited to requirements for education, experience, training and examination, provisions for operating procedures; the division of specific licensees in classes, and other rules as are necessary and proper to accomplish the purposes of Chapter 23 of Title 54.1 of the Code of Virginia.

In addition, this general review is necessary to comply with Executive Order 17 (2014). Alternatives may be considered after the review of any submissions during the public comment period.

**Regulatory flexibility analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The Board considers that the regulatory methods implemented were promulgated to accomplish compliance with any applicable law while minimizing the adverse impact on individuals and businesses and ensuring that the health, safety and welfare of the public is protected.

**Periodic review and small business impact review report of findings**

*If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, 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. In addition, as required by 2.2-4007.1 E and F, please include 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.*

The NOIRA was not the result of a periodic review/small business impact review.

**Public comment**

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Regulation *#	Summary of Comment(s)	Draft Board Response
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Commenter		
18 VAC 160-20	Supports the requirement of a contract, disclosure of ethical conflicts, copyright protection and responsibility for work under a certified professional.	The Board appreciates the comment and will take this comment into consideration when drafting proposed regulations.
Jeff T. Walker (Received on Town Hall)		
18 VAC 160-20	Believes the Standards of Practice section of the regulations are inadequate for Onsite Soil Evaluators and recommends developing new Standards of Practice that reflect the standards found in the Architect, Professional Engineer, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) Board regulations.	The Board appreciates the comment and will take this comment into consideration when drafting proposed regulations.
Robert B Charnley, III (Received via email)		
18 VAC 160-20	Raised concerns over the number of various categories of onsite sewage system professionals and believes this mixture of operators, designers, and installers serves to undermine the Board’s authority. Believes the various licenses are confusing to homeowners who seek services of onsite professionals and suggests the Board consider <b>one</b> license type that would cover all onsite sewage system needs.	The Board appreciates the comment. Chapter 23 of Title 54.1 of the Code of Virginia establishes the areas of licensure (conventional and alternative) and the types of onsite sewage system licensure (installer, operator, and onsite soil evaluator) and does not provide for a “combined” license. The number of license types referenced in the comment is inflated as it includes the various interim licenses.
Bob Marshall Cloverleaf Env. Consultation, Inc. (Received on Town Hall)		

18 VAC 160-20	Request the Board review the following discussion points (Withdrawal[sic], Conflict of Interest, and Exception to Liability Limitation) and their excerpts from The Model Code Framework for the Decentralized Wastewater Infrastructure, Volume I-Workbook for Writing the Code (NOWRA)	The Board appreciates the comment and will take this comment into consideration when drafting proposed regulations.
Bob Marshall Cloverleaf Env. Consultation, Inc. (Received via Email)		

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

A family impact has not been identified.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Existing Regulation:

The Board proposes to repeal 18 VAC 20 of the regulations in their entirety. The purpose of repealing the chapter is to provide clarification and enact consistent regulatory provisions as they relate to waterworks and wastewater works operators and onsite sewage system professionals.

New Regulation

The Board proposes to add two new chapters to the Board's regulations. Chapter 30 will serve to clarify previous regulations as they relate to the profession of waterworks and wastewater works operators. The intent of the changes is to provide an increase of options to those who are technically qualified for licensure, reduce or remove barriers to licensure while still ensuring minimum competency within the waterworks and wastewater works operator field. . The expected impact of such regulatory changes include but is not limited to proposing regulatory requirements as not to create or maintain unnecessary difficulties in obtaining the licensure required to continue to perform its business in the Commonwealth.

The Board proposes to add two new chapters to the Board's regulations. Chapter 40 will serve to clarify previous regulations as they relate to the profession of onsite sewage system operators, onsite sewage system installers and onsite soil evaluators. . The changes will provide an increase of options to those who are technically qualified for licensure, reduce or remove barriers to licensure while still ensuring minimum competency within the onsite sewage system fields. The expected impact of such regulatory changes include but is not limited to proposing regulatory requirements as not to create or maintain unnecessary difficulties in obtaining the licensure required to continue to perform its business in the Commonwealth.