

**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 April 10, 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:

John Aulbach, II, Vice Chair
Kornell Davis, Jr., Chair
Barry T. Dunkley
D. Perry Greene
Kristen Lentz
Michelle Ann Magrino (arrived at 9:06 a.m.)
E. Brooke Philpy
Gary Schafran
D. Wayne Staples
Ronald Thomas

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

Nick Christner, Acting Director
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Trisha L. Henshaw, Executive Director
Bill Murray, Acting Examinations Director
Kristin Clay, Board Administrator
Samantha Vrscak, Legal Analyst
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 9:03 a.m. **Call to Order**

Ms. Henshaw advised the Board of the emergency evacuation procedures. **Emergency Evacuation Procedures**

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

Mr. Philpy moved that the Board approve the minutes of the January 16, 2014, Board meeting. Mr. Dunkley seconded the **Approval of Minutes**

motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Philpy, Schafran, Staples, and Thomas.

Mr. Davis opened the floor for public comment. Mr. Jeff Walker, authorized onsite soil evaluator, licensed professional soil scientist, and President of the Virginia Association of Professional Soil Scientists was present and addressed the Board. He hopes the Board will reconvene the Onsite Sewage System Professionals Workgroup. He expressed his concerns about the standards of practice; double standards; systems not meeting regulations; direct supervision; no disclosure affecting property value; single standard for design only trained soil scientists; engineering issues; and specific complaints.

**Public Comment
Period**

Ms. Magrino arrived at 9:06 a.m.

**Arrival of Board
Member**

Mr. John Ewing, an authorized onsite soil evaluator, installer, operator, and who served on the Safety and Health in Facilitating a Transition (SHIFT) Workgroup was present and addressed the Board. He sees problems with enforcing licensure and wants to learn more about the Board's processes.

**Public Comment
Period**

Mr. Bob Willoughby, an authorized onsite soil evaluator and owner of LRH Soil Consultants was present and addressed the Board. He stated that the Virginia Department of Health (VDH) has standards for private sector authorized onsite soil evaluators and no standards for Environmental Health Supervisors (EHS) authorized onsite soil evaluators; sent report to Committee about this issue; he is not here to complain about every EHS but complain against VDH and ask why VDH does not answer to anyone and why they have a separate standard; who reviews VDH work; unlicensed contractors putting in systems and VDH allows it; his company will not inspect unlicensed work; and he wants to file a complaint against VDH.

Mr. Davis transferred the Chair to Mr. Philpy and recused himself from the meeting.

Transfer of Chair

In the matter of **File Number 2014-02207, Karl Rudolph**, 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. Karl Rudolph was present and addressed the Board. Mr. Rudolph has worked with VDH since 1985. He was issued an interim alternative onsite sewage system operator license in 2009. He stated that the regulations are prejudice towards individuals employed in the public sector and he cannot

**File Number 2014-
02207, Karl
Rudolph**

maintain his own system. He is asking the Board to let him sit for the alternative onsite sewage system operator examination based on the Board's guidance document. After much discussion and consideration, Mr. Schafran made a motion to reject the recommendation of the Presiding Officer and approve Mr. Rudolph's application to sit for the alternative onsite sewage system operator examination and enter into an Agreement for Licensure contingent upon Mr. Rudolph agreeing to the following conditions within 14 days:

1. Rudolph shall comply with all applicable laws and regulations, including notifying the Board if he is subject to any disciplinary action by the Board, an administrative body or by a court of any activity related to the performance of his duties as a licensed onsite sewage system professional; or convicted of any felony or misdemeanor in any jurisdiction; and
2. After passing the examination and obtaining licensure as an alternative onsite sewage system operator, Rudolph shall be placed on probation for a period of two years. If, after two years, Rudolph has had no violations of the Board's regulations, the probationary period will end.

Rudolph understands these restrictions, and agrees to abide by them in consideration of his approval to sit for the alternative onsite sewage system operator examination and, after having passed the examination, being granted a license as alternative onsite sewage system operator by the Board.

Mr. Staples seconded the motion which was unanimously approved by: Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas. Mr. Davis was not present during the discussion or vote due to a personal interest in this matter. Mr. Aulbach recused himself from the meeting and was not present during the discussion or vote because the applicant indicated he had a personal issue or concern with him during the informal fact-finding.

Mr. Davis returned to the meeting and resumed the position of Chair.

Transfer of Chair

In the matter of **File Number 2014-02208, Philip Helm**, 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. Helm was not present. Mr. Dunkley moved to accept the recommendation of the Presiding Officer and

File Number 2014-02208, Philip Helm

approve Mr. Helm's application for an alternative onsite sewage system installer license. Mr. Staples seconded the motion which was approved by: Dunkley, Greene, Magrino, and Staples. Members voting in opposition were: Aulbach, Lentz, Philpy, Schafran, and Thomas. Mr. Davis abstained from voting. The motion failed.

After further discussion, Ms. Lentz made a motion to deny Mr. Helm's license due to the severity and egregiousness of Mr. Helm's actions and past behavior that is not showing competency and disregarding the safety and welfare of the public as evidenced by the documents incorporated in the record. Mr. Schafran seconded the motion. After discussion, Ms. Lentz withdrew her motion, and Mr. Schafran withdrew his second.

Mr. Dunkley made a motion to remand the case to another Informal Fact-Finding Conference to consider new evidence. Mr. Aulbach seconded the motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

In the matter of **File Number 2014-02225, Jesse Hott**, 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. Frank Bredimus was present and addressed the Board. Mr. Bredimus agreed with the recommendation and wanted to correct an error in the record stating that Mr. Hott's last arrest was in 2005 sentenced in 2008. Mr. Jesse Hott was present and addressed the Board. He stated he works for his father, has moved on with his life, and has a family. Mr. Greene moved to accept the recommendation of the Presiding Officer and approve Mr. Hott's application for a conventional onsite sewage system operator license. Mr. Staples seconded the motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

File Number 2014-02225, Jesse Hott

Ms. Henshaw gave an update on the current status of the regulatory review processes for the Board's Regulations.

**Update on
Regulatory Review
Processes**

The standard regulatory process action amending the definitions related to supervision and entry requirements for installers has completed executive branch review. The public comment period ended February 14, 2014. A public hearing was held on December 18, 2013.

The proposed amendment made pursuant to the Governor's

Regulatory Reform Initiative has completed executive branch review. The public comment period ended March 14, 2014. A public hearing was held on February 27, 2014.

The proposed fee adjustment amendment to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations 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 ends May 7, 2014.

Ms. Henshaw stated there were no comments received during the public comment period on the Board's proposed amendments to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations as part of the Governor's Regulatory Reform Initiative. A public hearing was held on February 27, 2014.

WWWOSSP
Regulations
Governor's
Regulatory Reform
Initiative

Mr. Dunkley made a motion to adopt the amendments to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations as part of the Governor's Regulatory Reform Initiative as final regulations. Mr. Staples seconded the motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

Adopt Final
WWWOSSP
Regulations
Governor's
Regulatory Reform
Initiative

The Board members were provided with the public comments for the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (To Amend Definitions of Supervision, Sewage Disposal System Experience, and Document Requirements for Installers), as well as a draft of the Board's response for each comment. Eight comments were received during the public comment period of December 16, 2013 to February 14, 2014. After review and discussion, Mr. Staples moved to adopt the draft responses. Mr. Dunkley seconded the motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

WWWOSSP
Regulations
(Amend Definitions
of Supervision,
Sewage Disposal
System Experience,
and Document
Requirements for
Installers)
Review Summary
of Public
Comments and
Adopt Board
Response

Ms. Henshaw discussed several amendments in the proposed Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations requiring non-substantive revision. Some suggested changes were made in the section on Qualifications for licensure – onsite sewage system installers.

Adopt Final
WWWOSSP
Regulations
(Amend Definitions
of Supervision,
Sewage Disposal

After reviewing the proposed regulations pursuant to comments received, Mr. Dunkley made a motion to accept staff recommendations of non-substantive changes and adopt the amendments to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (To Amend Definitions of Supervision, Sewage Disposal System Experience, and Document Requirements for Installers) as final regulations. Mr. Philpy seconded the motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

**System Experience,
and Document
Requirements for
Installers)**

Ms. Henshaw advised the Board that staff conducted a review of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations and based upon this review indicated that a review of the regulations was warranted. Ms. Henshaw advised that a Notice of Intended Regulatory Action (NOIRA) for the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations must be authorized by the Board if it wishes to initiate the regulatory review process. Ms. Henshaw discussed several areas of concern: entry requirement, standards of conduct, continuing professional education, and conduct a general review. Ms. Henshaw is also considering splitting the regulations into two parts.

**Consider NOIRA
for General Review
of Regulations**

After discussion, a motion was made by Mr. Philpy to authorize staff to file a Notice of Intended Regulatory Action for the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations to proceed with consideration of amendments as discussed as well as any other amendments that may be identified that achieve the objectives of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations. Mr. Thomas seconded the motion which was approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

In an effort to be more cost efficient and effective, Ms. Henshaw stated that staff will provide a proposed draft of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations to the Board at a future meeting to be considered.

The Board recessed for a break at 10:35 a.m. and reconvened at 10:46 a.m.

Break

Ms. Henshaw provided a handout of active and inactive legislation affecting the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations and/or its programs during the 2014 Virginia General Assembly session. Ms. Henshaw provided additional information about several bills that were presented this Session.

Legislative Update

The Board was provided with a memorandum, as well as a handout, from Ms. Clay requesting Board guidance regarding a new law affecting interim licensees under the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

Guidance Document

Senate Bill 657, as passed by the General Assembly, would require the Board for Waterworks and Wastewater Works and Onsite Sewage System Professionals (Board) to extend interim alternative onsite sewage system installers licenses in specific circumstances. The bill as approved by both the House and the Senate reads as follows:

“That the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals shall extend one time and deem to be valid an interim license as an alternative onsite sewage system installer issued in accordance with regulations of the Board to any person who holds a valid interim license at such time as such person applies to take the examination required for issuance of an alternative onsite sewage system installer license in accordance with the requirements of § 54.1-2301, as it is currently effective and as it shall become effective, of the Code of Virginia and regulations of the Board. An interim license renewed in accordance with the provisions of this act shall be valid until such time as the licensee receives a passing score on the examination required for issuance of a license or for a period of six months, whichever occurs sooner.”

In order to ensure consistency in processing, Board staff requests that the Board adopt a guidance document outlining the procedures and any special circumstances for applicants applying pursuant to SB 657.

For the purposes of this memorandum, an “applicant” is a currently licensed alternative onsite sewage system installer who has submitted an *Onsite Sewage System Installer License Application* for the alternative onsite sewage system installer examination and

is seeking an extension pursuant to SB 657.

Staff recommends the Board adopts the following procedures:

1. A one-time, six-month extension will only be granted to an applicant who submits a completed application to the Board and has a current interim alternative onsite sewage system installer license at the time of receipt of the completed application.
 - a. A “completed application” means the Board-approved application form, applicable fees, experience and training that meets the minimum requirements of the Board’s regulations and as documented on Board-approved forms, continuing professional education (CPE) pursuant to 18 VAC 160-20-109 of the Board’s regulations, and any other information necessary to demonstrate compliance with the Board’s regulations.
2. An application submitted pursuant to SB 657 that is not complete or that is submitted by an applicant whose interim alternative onsite sewage system installer license has expired will not be eligible for the six-month extension of the interim license; however, the application will be reviewed for exam eligibility in accordance with the Board’s regulations.
3. An application received by the Board pursuant to SB 657 that is not complete or that is received after the expiration date of the applicant’s interim alternative onsite sewage system installer’s license, shall not be eligible for the six month extension; however, the application will be reviewed for exam eligibility in accordance with the Board’s regulations.
4. Upon approval of the application submitted pursuant to SB 657, a new license card will be issued that reflects a new expiration date that is six months from the original interim license expiration date.
5. An applicant that does not pass the examination within the six-month extension period is not eligible for another six-month extension and cannot lawfully continue performing the duties of an alternative onsite sewage system installer without a license. However, the applicant may continue attempting to pass the examination up to one year from application approval without having to submit a new application and fee.

Mr. Aulbach made a motion that Board staff shall grant the statutorily mandated extension prior to the Informal Fact-Finding process. Mr. Davis seconded this motion which was unanimously

approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

Mr. Staples made a motion for the Board to adopt the proposed guidance document and amend section as needed to comply with Senate Bill 657. Mr. Aulbach seconded the motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

Ms. Henshaw is coordinating with PSI to ensure that the schedule for review for all of the onsite sewage system professionals' exams begins this summer or as soon as possible. Mr. Davis suggested staff provide a list of the candidates with the exception of instructors or trainers to participate in the first exam writing for onsite sewage system professionals. Ms. Henshaw will provide a copy of the list of candidates to the Board members.

**Onsite Sewage
System
Professionals Exam
Review**

Ms. Clay discussed the Waterworks Operators 2013 continuing professional education (CPE) audit. As of December 18, 2013, the regulant population for waterworks operators totaled 2,175. Of the 109 regulants (five percent of the 2,175 regulant population) were randomly selected. Individuals licensed less than two years as of February 28, 2011 were manually excluded. On December 18, 2013, staff sent initial letters and CPE audit form were mailed to individuals selected for audit. The due date of CPE audit forms and required documentation was January 31, 2014. On February 7, 2014, staff sent a second letter with a due date of March 7, 2014. As of February 7, 2014, the responses received were: 12 no response, 14 were incomplete, and five requested extensions. Staff sent a third follow-up letter on March 17, 2014, with a deadline of April 15, 2014, to all regulants who have failed to respond. As of March 21, 2014, the responses received as of close of business were: 98 passed, seven no response, one exclusion, and two voluntary surrenders. Those regulants who have not complied with the April 15, 2014 due date shall be forwarded to the Department's Compliance and Investigation Division for consideration of any regulatory violations.

**Discuss
Waterworks
Operators CPE
Audit**

Ms. Henshaw provided the Board a copy of a letter dated March 10, 2014 to Mr. William Quimbayoglen, Chief of Water Training Division regarding the Virginia Veteran Workforce Initiative. When Ms. Henshaw last met with Mr. Aulbach and representatives from Quartermaster School, she indicated that making the licensing process more accommodating will benefit applicants with military experience. Staff is confident that current and former military personnel who have gained relevant experience through the military that meet the requirements for water works operators and will be

**Update on VDH
Program
for Veterans**

able to apply for examination and licensure with minimal deviation from the current application process. The Board will accept a Certificate of Release or Discharge from Active Duty, Verification of Military Experience Training, a Noncommissioned Evaluation Report, or equivalent forms issued by a military agency to document experience gained through the military. In addition, while training is not required for licensure as a class 4 water works operator, the Board will accept a Joint Services Transcript as verification of coursework completed for Continuing Professional Education so long as the coursework meets the Board's requirements.

Mr. Aulbach thanked the Board members and staff for their support in the Virginia Veteran Workforce Initiative.

Ms. Henshaw provided a memorandum to the Board regarding entry requirements for out of state applicants for onsite sewage system professional licensure. Board staff has received a number of inquiries from out-of-state applicants seeking licensure related to onsite sewage systems (installer, operator, and soil evaluator). The specificity to Virginia licenses in the entry requirements may inhibit the ability of an otherwise qualified individual from obtaining licensure in Virginia.

Discussion on
Entry
Requirements
Out of State
Applicants

The current regulatory requirements for licensure as an installer, operator or soil evaluator contain language wherein the applicant must pass a board approved examination in addition to obtaining a combination of education and/or experience. Typically, experience must be under the direct supervision or verified by another Virginia licensee (which under the current licensure scheme, a licensee is limited to a Virginia license by definition.) In addition, documentation provisions are specific to VDH which would preclude a person doing similar work in another state.

After discussion, Mr. Dunkley made a motion to adopt a guidance document stating that out of state applicants seeking licensure related to onsite sewage systems (installer, operator, and soil evaluators) will be reviewed to determine whether they are substantially equivalent with the Board's regulations. Mr. Staples seconded the motion which was unanimously approved by: Aulbach, Davis, Dunkley, Greene, Lentz, Magrino, Philpy, Schafran, Staples, and Thomas.

Ms. Henshaw provided a memorandum to the Board regarding entry requirements for licensed professional engineers or alternative onsite soil evaluators seeking licensure as onsite sewage system operators. Board staff has received a number of inquiries

Professional
Engineers and the
Alternative Onsite
Sewage System

Operator Requirements

from individuals who are licensed professional engineers or alternative onsite soil evaluators seeking licensure as onsite sewage system operators. These individuals are employed by firms (not sole proprietors) but are not under the direct supervision of another onsite sewage system operator. While these individuals are authorized by law and/or regulation to design onsite sewage systems, they are not able to meet the Board's requirements for licensure as an onsite sewage system operator, thereby preventing them from being able to maintain the systems they have designed.

An individual seeking licensure as an alternative onsite sewage system operator must first obtain the conventional onsite sewage system operator license.

At its April 12, 2011, Board meeting, the Board considered the entry requirements for alternative onsite sewage system operators who are self employed. The following is included in the Board's guidance documents:

In 18 VAC 160-20-98 of the Board's regulations, an applicant for an alternative onsite sewage system operator license must provide verification of the required amount of experience working under the direct supervision of an interim alternative onsite sewage system operator licensee or an alternative onsite sewage system operator licensee. 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 examination provided that 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.

The Board previously considered the inability of a sole proprietor to meet the entry requirements for licensure as an onsite sewage system operator as contained in the Board's regulations because the individual could not comply with the provision requiring experience to be gained under the direct supervision of an operator licensee. However, this policy excludes those who may work within a different business entity (i.e., corporation, limited liability corporation, partnership, professional corporation, etc.) and who have not worked under the direct supervision of an operator licensee, yet would appear to be otherwise qualified to take the examination for licensure as an onsite sewage system operator.

After discussion, the Board agreed by consensus to continue with the current process and any non-routine applications will be reviewed by a Board member.

Ms. Henshaw provided the Board a copy of the quarterly examination statistics report for informational purposes.

Quarterly Examination Statistics Report

Ms. Henshaw suggested scheduling an additional Board meeting date for the Board to begin to review the draft Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations. Staff will check the agency calendar for a date and will provide at the next Board meeting.

Add New Board Meeting Date

After discussion, the Board moved to adopt the following 2015 Board meeting dates by consensus:

Set 2015 Meeting Dates

- January 29, 2015
- April 16, 2015
- July 23, 2015
- October 15, 2015

The following meeting dates have been scheduled:

Future Meeting Dates

- Thursday, July 24, 2014
- Thursday, October 16, 2014

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 12:05 p.m.

Adjourn

Kornell R. Davis, Jr., Chair

Nick Christner, Acting Director