

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

***Tentative* AGENDA THURSDAY, JANUARY 14, 2021
9:30 A.M.**

****VIRTUAL MEETING****

MEMBERS OF THE PUBLIC: PLEASE SEE PAGE THREE OF THE AGENDA FOR VIRTUAL MEETING ACCESS INSTRUCTIONS.

I. CALL TO ORDER

II. APPROVAL OF AGENDA

- a. Board Agenda, January 14, 2021

III. ANNOUNCEMENTS

IV. APPROVAL OF MINUTES

- a. Board Meeting Minutes, October 22, 2020

V. PUBLIC COMMENT PERIOD – Five-minute public comment, per person, on those items not included on the agenda with the exception of any open disciplinary files.

VI. REGULATORY ACTIONS

- a. Regulatory Action Update
- b. Periodic Review of Regulations
 - i. Waterworks and Wastewater Works Operators Licensing Regulations
 - ii. Onsite Sewage System Professionals Licensing Regulations
- c. Consider Exempt Actions to Amend Fees

VII. OTHER BUSINESS

- a. OSSP 2020 CPE Audit Report
- b. Examination Updates
 - i. Examination Statistics Report
 - ii. Update from ABC Exam Reviews to Incorporate 2019 Amendments
- c. DPOR Updates as it Relates to COVID-19 Response
- d. Board Financial Statements
- e. Update on Outreach Opportunities
- f. Update on JLARC Study on the Need for Continued Regulation of Certain Professions and Occupations
- g. 2021 Legislative Update
- h. Other Business

VIII. FUTURE MEETING DATES

- a. April 29, 2021

IX. COMPLETE CONFLICT OF INTEREST FORMS

X. ADJOURN

Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the Department at (804) 367-0362 at least ten days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The Department fully complies with the

Americans with Disabilities Act.

** Agenda materials made available to the public do not include disciplinary case files or application files pursuant to §54.1-108 of the *Code of Virginia*.

DRAFT AGENDA
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and are not to be construed as regulation or official Board position.
DRAFT AGENDA



BOARD FOR WATERWORKS AND WASTEWATER WORKS AND ONSITE SEWAGE SYSTEM PROFESSIONALS PUBLIC PARTICIPATION IN JANUARY 14, 2021 BOARD MEETING

AUTHORITY | Virtual Meeting

Access to the Perimeter Center, where DPOR board meetings are normally held, is closed to the public as a result of the COVID-19 pandemic. The meeting will be conducted in accordance with the applicable provisions of the Freedom of Information Act (Chapter 37 of Title 2.2 of the Code of Virginia) and Amendment 28 to House Bill 29 (Budget Bill for 2018-2020).

ACCESSING THE MEETING | Google Meet

Members of the public may observe the meeting via the Google Meet platform using the link below:

Link: meet.google.com/koq-vizw-krq

The public can also listen to the meeting via audio by calling the number below and entering the PIN:

Phone number: 1-531-600-9452

PIN: 472 736 452#

PUBLIC COMMENT | Registration Required

Members of the public who would like to provide comments to the Board during the public comment period must notify the Board in advance of the meeting in order to be registered. Please email the Board at waterwasteoper@dpwr.virginia.gov by 12:00 p.m. on Wednesday, January 13, 2021 and provide your name and email address. You will receive an email confirmation once your registration is complete.

VIRTUAL BOARD MEETING INSTRUCTIONS

Providing Public Comment

- Members of the public who have registered to provide comment can do so after having their names announced during the public comment period.
- Commenters will be limited to 5 minutes.
- Participants are asked to call from a location without background noise.
- The public comment period is an opportunity to provide comments to the Board. If a member of the public has questions of the Board or needs information, please email your inquiry to the Board office at the email address above so that staff can handle it appropriately.
- At the close of the public comment period, all public participants' connections to the meeting will be muted, and they will only be able to view and listen to the meeting.
- Feedback on this electronic meeting can be provided to the FOIA Council on the *Electronic Meetings Public Comment* form at <http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>.

DURING THE MEETING | Broadcast Interruption

Should an interruption of the broadcast occur during the meeting, please call 804-367-0362 or email Tanya.Pettus@DPOR.Virginia.gov.

The Board and staff appreciate your patience as we work through any challenges associated with a virtual meeting. The safety of all participants is of utmost concern during these unprecedented times and we look forward to resuming in-person meetings once it is safe to do so.

**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 (Board) met on October 22, 2020, at Deep Run Park, 9900 Ridgefield Parkway, Deep Run Recreation Center, Ridgefield Ballroom, Henrico, Virginia 23233.

The following members of the Board were present:

James N. Brockwell
Erica Duncan
W. Jordan Evans
John Ewing
Thomas Wayne Fore, Vice-Chair
Pamela M. Pruett, Chair
Don Riggleman
D. Wayne Staples
Caleb Taylor

Board members Rosa-Lee Cooke and Dwayne Roadcap were not present at the meeting.

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

Mary Broz-Vaughan, Director
Trisha L. Henshaw, Executive Director
Shannon Webster, Director of Examinations
Tanya M. Pettus, Administrative Assistant

Joshua Laws from the Office of the Attorney General was present at the meeting.

Ms. Pruett, Chair, finding a quorum of the Board present, called the **Call to Order** meeting to order at 10:07 a.m.

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

Ms. Henshaw advised the Board of safety measures currently in place due to COVID-19. **COVID-19 Safety Reminders**

Ms. Henshaw thanked staff members Brenda Hundley and Lee Bryant, who were present to assist in implementing safety protocols.

Mr. Fore moved to approve the agenda as presented. Mr. Staples **Approval of Agenda** seconded the motion which was unanimously approved by: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggleman, Staples, and Taylor.

Mr. Riggleman moved to approve the minutes of the July 23, 2020, Board meeting minutes as presented. Mr. Staples seconded the motion which was unanimously approved by: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggleman, Staples, and Taylor.

Approval of Minutes

There were no members of the public present to address the Board on matters other than the application files to be presented.

Public Comment Period

Ms. Henshaw advised the Board of the new computer tablets used to view the meeting agenda, and gave a brief overview of the equipment.

General Meeting Information

Ms. Henshaw provided an update on the current status of the regulatory review processes for the Board's regulatory packages:

Regulatory Action Update

Notice of a periodic review of the Waterworks and Wastewater Works Operators Licensing Regulations was filed on October 6, 2020, and will be published in the Register on October 26, 2020. A public comment period will be held from October 26, 2020 to November 16, 2020.

Notice of a periodic review of the Onsite Sewage System Professionals Licensing Regulations was filed on October 6, 2020, and will be published in the Register on October 26, 2020. A public comment period will be held from October 26, 2020 to November 16, 2020.

Ms. Henshaw also advised that the Board for Contractors has begun a regulatory action to convert the current Sewage Disposal System (SDS) specialty into two categories, SDS-Alternative (SSA) and SDS-Conventional (SSC), in order to align the license of the Qualified Individual to the type of license held from the WWWOSSP Board. Ms. Henshaw stated she will keep the Board informed of the progress of the regulatory action.

Discussion was held on a study being conducted to determine the need of continued regulation of various professions, including soil scientists and backflow prevention device workers, as recommended by the Joint Legislative Audit and Review Commission (JLARC). Ms. Broz-Vaughan advised that the study report, to include public comments and various analyses, is due to the legislature on December 31, 2020. Ms. Broz-Vaughan and Ms. Henshaw advised that the Board will be informed of the outcome of the completed report.

In the matter of **File Number 2020-02122, John A. Clements, Sr.**, 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. Fore moved to accept the recommendation of the Presiding Officer and approve Mr. Clements' application for a Class 4 Wastewater Works Operator license 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: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggleman, Staples, and Taylor.

File Number 2020-02122, John A. Clements, Sr.

In the matter of **File Number 2020-02311, Daniel Lee Gray**, 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.

File Number 2020-02311, Daniel Lee Gray

Mr. Gray was present to address the Board. Mr. Gray thanked the Board for their time and provided an overview of his work history over the past eight years. Mr. Gray stated that he has worked his way up at his current employer, and stated that he enjoys the work of an onsite sewage system installer. Mr. Gray asked the Board to consider approving his application.

Mr. Fore moved to accept the recommendation of the Presiding Officer and approve Mr. Gray's application for a Master Conventional Onsite Sewage System Operator license. Mr. Riggleman seconded the motion which was unanimously approved by: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggleman, Staples, and Taylor.

Ms. Pettus provided an update on the 2020 wastewater works operator CPE audit. The audit began on June 16, 2020, based on a random selection of 5% of current licensees.

WWWO 2020 CPE Audit Report

Ms. Pettus also advised the onsite sewage system professionals audit began on October 7, 2020, and that results of the audit would be presented to the Board at its next meeting.

Ms. Webster advised the Board that a subject matter expert (SME) review of the 2019 ABC exam for waterworks operators was held on October 21, 2020, and an SME review of the 2019 ABC exam for wastewater works operators was scheduled for October 23, 2020. If there are no concerns regarding the exam to be brought

PSI/AMP Examination Updates

before the Board, any revisions made by the respective reviews would be rolled into production.

Ms. Webster advised the Board that she has been working diligently with PSI to resolve complaints regarding delays in exam scheduling as well as other concerns. Ms. Webster advised PSI has opened an additional call center to provide service to onsite exam candidates.

Ms. Henshaw provided the Board with waterworks and wastewater works examination statistics from January 1, 2017 through October 12, 2020, as well as onsite examination statistics from January 1, 2017 to October 19, 2020, and April 23, 2020 to October 19, 2020.

Ms. Webster provided the Board with a report on ABC post-exam survey results. The report was based on surveys that were added to waterworks and wastewater works exams, and statistics provided by PSI.

Ms. Henshaw reminded the Board of temporary waivers of certain regulations pursuant to Executive Order 51 in response to COVID-19. During the current state of emergency, the validity of licenses, certifications, registrations, and other authorizations issued by the Board that would otherwise (i) expire during the state of emergency and (ii) be eligible for renewal or reinstatement during the state of emergency under applicable regulations, will be extended until the 30th day after the date by which the state of emergency is lifted. In addition, regulations that prohibit or limit online, electronic, or distance learning have also been waived until the 30th day after the date by which the state of emergency is lifted. Ms. Henshaw noted that the waivers do not apply to statutory requirements.

Ms. Henshaw advised the Board that the agency remains closed to the public and staff scheduling adjustments remain in place, including telework for those employees who are eligible.

Mr. Fore moved to allow wastewater works SMEs to receive one continuing professional education (CPE) credit for each hour they participated in the exam review. Mr. Brockwell seconded the motion which was unanimously approved by: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggelman, Staples, and Taylor.

Although Mr. Fore did not request consideration of CPE credit for waterworks SMEs who participated in the exam review since he was a participant in such review, Ms. Henshaw asked the Board to consider a similar motion for waterworks SMEs. Mr. Staples moved to allow waterworks SMEs to receive one CPE credit for each hour they participated in the exam review. Mr. Ewing seconded the

**DPOR Updates as it
Relates to COVID-
19 Response**

**PSI/AMP
Examination
Updates Continued**

motion which was unanimously approved by: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggleman, Staples, and Taylor.

Ms. Henshaw provided the Board with the most recent financial statements for review.

Board Financial Statements

Ms. Henshaw updated the Board on recent and upcoming outreach opportunities.

Update on Outreach Opportunities

Ms. Pruett thanked Mr. Fore for his ethics lesson presented to participants of the Virginia Tech Short School, which was held virtually in August.

Mr. Fore thanked Mr. Staples and Mr. Taylor for their past and continuing work on the Short School.

Ms. Henshaw opened the floor for annual nominations of the Board Chair. Mr. Fore moved to nominate Ms. Pruett. Ms. Pruett accepted the nomination. Mr. Fore moved to close the nominations. Mr. Ewing seconded the motion, which was unanimously approved by: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggleman, Staples, and Taylor. Ms. Pruett abstained. By acclamation, Ms. Pruett was named Board Chair.

Election of Officers

Ms. Pruett opened the floor for annual nominations of Board Vice-Chair. Mr. Riggleman moved to nominate Mr. Fore. Mr. Fore accepted the nomination. Mr. Taylor moved to close the nominations. Mr. Evans seconded the motion, which was unanimously approved by: Brockwell, Duncan, Evans, Ewing, Fore, Pruett, Riggleman, Staples, and Taylor. By acclamation, Mr. Fore was named Board Vice-Chair.

Ms. Pruett reminded the Board that the next scheduled meeting date is October 22, 2020.

Future Meeting Dates

Ms. Pruett reminded the Board members to complete and return their conflict of interest forms and travel vouchers.

Complete Conflict of Interest Forms and Travel Vouchers

There being no further business, the meeting was adjourned at 10:58 a.m.

Adjourn

Pamela M. Pruett, Chair

Mary Broz-Vaughan, Secretary

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Five minute public comment, per person, with the exception of any open disciplinary or application files.

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Board for Waterworks and Wastewater Works Operators and Onsite Sewage Systems Professionals

Update on Regulatory Actions

(as of December 31, 2020)

Action: Waterworks and Wastewater Works Operators Licensing Regulations – Periodic Review

- Periodic Review Notice filed on 10/6/20.
- Notice published in Register on 10/26/20.
- Public comment period held from 10/26/20 to 11/16/20. One comment received.
- Results of public comment to be presented to Board at 1/14/21 meeting.

Action: Onsite Sewage System Professionals Licensing Regulations – Periodic Review

- Periodic Review Notice filed on 10/6/20.
- Notice published in Register on 10/26/20.
- Public comment period held from 10/26/20 to 11/16/20. One comment received.
- Results of public comment to be presented to Board at 1/14/21 meeting.



Agency Department of Professional and Occupational Regulation

Board

Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals

Chapter **Waterworks and Wastewater Works Operators Licensing Regulations**
[18 VAC 160 - 30]

Review 2008

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 10/6/2020

Review Announcement

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals is conducting a periodic review and small business impact review of VAC citation: 18 VAC 160-30, title of regulation: Waterworks and Wastewater Works Operators Licensing Regulations.

The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 26, 2020, and ends on November 16, 2020.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Name: Trisha Henshaw, Title: Executive Director, Address: DPOR, 9960 Mayland Drive, Suite 400, City: Richmond, State: Virginia, Zip: 23233, Telephone: (804)367-8595, FAX: (866)350-5354, email address: waterwasteoper@dpor.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information

Name / Title: Trisha Henshaw / *Board Executive Director*

Address: 9960 Mayland Drive
Suite 400
Richmond, VA 23233

Email Address: waterwasteoper@dpor.virginia.gov

Telephone: (804)367-8595 FAX: (866)350-5354 TDD: (-)

Publication Information and Public Comment Period

Published in the Virginia Register on 10/26/2020 [Volume: 37 Issue: 5]

Comment Period begins on the publication date and ends on 11/16/2020

Comments Received: 0

Review Result

Pending

Attorney General Certification

Result of Review: Certified

 **Review Memo** 10/16/2020

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Virginia Administrative Code
Title 18. Professional And Occupational Licensing
Agency 160. Board For Waterworks And Wastewater Works Operators And Onsite Sewage System Professionals
Chapter 30. Waterworks and Wastewater Works Operators Licensing Regulations

Part I. Definitions

18VAC160-30-10. Definitions.

A. Section 54.1-2300 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Board"

"Onsite sewage system"

"Operator"

"Owner"

"Wastewater works"

"Waterworks"

B. The following words, terms, and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Applicant" means an individual who submits an application with the appropriate fee and other required documentation.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Category" means a profession under the board's purview, which includes waterworks and wastewater works as applicable to the licensure of waterworks and wastewater works operators.

"Classification" means the division within each category of license as it relates to the classified facility. Class 1 represents the highest classification for each category of license.

"Contact hour" means 50 minutes of participation in a structured training activity.

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

"DEQ" means the Virginia Department of Environmental Quality.

"Direct supervision" means being immediately available and fully responsible for the provision of waterworks and wastewater works operation regulated pursuant to Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

"Direct supervisor" means a licensed waterworks or wastewater works operator who assumes the responsibility of direct supervision.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without such license.

"Maintenance" or "maintain" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis.

"Operate" means the act of (i) placing into or taking out of service a unit process or unit processes or (ii) making or causing adjustments in the operation of a unit process at a waterworks or wastewater works.

"Renewal" means the process and requirements for periodically approving the continuance of a license.

"Training credit" means a unit of board-approved training or formal education completed by an individual that may be used to substitute for experience when applying for a license.

"Treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes including 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 processes or (ii) used for ultimate disposal or residues or effluent resulting from such treatment.

"VDH" means the Virginia Department of Health.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry

18VAC160-30-100. Full-time experience or equivalent.

For the purposes of this part, experience requirements are expressed in terms of calendar periods of full-time employment as an operator or as an operator-in-training at a waterworks or wastewater works in the same category for which licensure is sought pursuant to this chapter.

1. A year of full-time employment is defined as a minimum of 1,760 hours during a 12-month period or a minimum of 220 workdays in a 12-month period. A workday is defined as attendance at a waterworks or wastewater works to the extent required for proper operation. More than 1,760 hours or 220 workdays during a 12-month period will not be considered as more than one year of full-time employment.

2. Partial credit may be given for actual hours of work experience if the applicant works as an operator or as an operator-in-training less than full time.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-110. Qualifications for examination approval.

A. An applicant for licensure as a waterworks or wastewater works operator shall furnish acceptable documentation that one of the following qualifications has been met.

TABLE 1 Waterworks and Wastewater Works Operator Experience and Education					
Classes	Education Required	Current License	Minimum Experience	Facility Type	Experience with Substitutions
Class 6 (Waterworks)	High school	N/A	Six months	Class 6 or higher facility	N/A

Operator Only)	diploma or GED				
	No high school diploma or GED	N/A	One year	Class 6 or higher facility	N/A
Class 5 (Waterworks Operator Only)	High school diploma or GED	N/A	Six months	Class 5 or higher facility	N/A
	No high school diploma or GED	N/A	One year	Class 5 or higher facility	N/A
Class 4	High school diploma or GED	N/A	Six months	Class 4 or higher facility	N/A
	No high school diploma or GED	N/A	One year	Class 4 or higher facility	N/A
Class 3	Bachelor's or master's degree	N/A	Six months	Class 4 or higher facility	N/A
	Associate's degree	N/A	Nine months	Class 4 or higher facility	Six months
	High school diploma or GED	N/A	One year	Class 4 or higher facility	Six months
	No high school diploma or GED	Class 4 license	Three years	Class 3 or higher facility	One and one-half years
Class 2	Bachelor's or master's degree	N/A	One year	Class 3 or higher facility	Six months
	Associate's degree	N/A	18 months	Class 3 or higher facility	Nine months
	High school diploma or GED	N/A	Two years	Class 3 or higher facility	One year
	No High school	Class 3 license	Five years	Class 2 or higher facility	Three and one-half years

	diploma or GED				
Class 1	Bachelor's or master's degree	Class 2 license	Two years	Class 2 or higher facility	One year
	Associate's degree	Class 2 license	Three years	Class 2 or higher facility	One and one-half years
	High school diploma or GED	Class 2 license	Four years	Class 2 or higher facility	Two years
	No high school diploma or GED	Class 2 license	Nine years	Class 2 or higher facility	Four and one-half years
Where applicable, the current license held, minimum experience, and the facility type must coincide with the category of license for which the application is being submitted.					

B. The direct supervisor shall certify the experience on the application form as accurate and relevant to the classification and category of license for which is being submitted. In the event that a licensed operator is not available to certify the experience of the applicant, the experience may be certified by a representative of the facility owner with first-hand knowledge of the applicant's experience.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-120. Provisional licensure for nonclassified facility operation.

An applicant for licensure as a provisional waterworks or wastewater works operator shall furnish acceptable documentation of having met all of the requirements of 18VAC160-30-110 except that the experience requirement may be met through experience gained as an operator or operator-in-training of a nonclassified facility. Such experience must be gained under the following conditions:

1. The experience is obtained at a nonclassified facility that is comparable in size and in treatment process as described in 18VAC160-30-360 and 18VAC160-30-370, as applicable.
2. The experience is obtained while performing nonclassified facility operation duties that provide experience comparable to that obtained at a classified facility. Experience operating and maintaining water distribution systems shall only be considered for a Class 5 or Class 6 provisional waterworks operator license. Experience limited solely to the operation and maintenance of wastewater collection system, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as a provisional operator or operator-in-training.
3. Any individual holding a provisional license may apply for licensure by submitting evidence of having met 50% of the experience required by 18VAC160-30-110 and submitting the appropriate application.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-130. Experience substitutions.

A. Experience obtained as a licensed alternative onsite sewage system operator before April 1, 2017, or a master alternative onsite sewage system operator may be substituted for the Class 4 wastewater works operator-in-training experience requirements.

B. 18VAC160-30-110 A provides the maximum experience substitutions that may be applied for each applicable class of license.

1. Experience gained in either waterworks or wastewater works operations may be substituted for up to one-half of the required experience in the alternate category so long as the experience was gained in an equivalent or higher class of facility.

2. Education may substitute for part of the required experience in the category of license applied for at a rate of one month of experience credit for each semester hour of college credit. Coursework must be relevant to the category and classification of the license being sought. The college credit must be from an accredited college or university that is approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, a regional or national accreditation association, or by an accreditation agency that is recognized by the U.S. Secretary of Education.

3. Board-approved waterworks or wastewater works operator training courses may be utilized for experience at a rate of one month experience for each training credit approved by the board.

C. Substitutions shall not exceed 50% of the total experience required for licensure.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-140. Education.

A. Applicants seeking to qualify for licensure based on completion of an associate's, bachelor's, or master's degree shall submit an official transcript from the school where the applicable degree was obtained. Only degrees from an accredited college or university that is approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education will be considered. Formal education used to meet a specific education requirement for license entry cannot also be used as a training credit for experience substitution.

B. The following degrees shall be considered to qualify in accordance with 18VAC160-30-110:

1. Bachelor's or master's degree in engineering or engineering technology in a related physical, biological, environmental, or chemical science;

2. Bachelor's degree in a related physical, biological, environmental, or chemical science that includes a minimum 40 semester credit hours in any combination of science and math;

3. Master's degree in a related physical, biological, environmental, or chemical science, and a bachelor's degree in any major such that the combined degrees include a minimum 40 semester credit hours in any combination of science and math; or

4. Associate's degree in waterworks, in wastewater works, or in a related physical, biological, environmental, or chemical science that includes a minimum of 20 credit hours in any combination of science and math.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part III. Renewal and Reinstatement

18VAC160-30-150. Expiration and renewal.

A. Licenses for waterworks operators shall expire on the last day of February of each odd-numbered year. Licenses for wastewater works operators shall expire on the last day of February of each even-numbered year.

B. Prior to the expiration date shown on the license, the board shall mail a renewal notice to the licensee's address of record. The licensee shall return to the board a renewal notice and the applicable renewal fee. Failure to receive a renewal notice from the board does not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee as an application for renewal.

C. By submitting the renewal or reinstatement fee, the licensee is certifying his continued compliance with the Standards of Practice and Conduct (Part VI (18VAC160-30-290 et seq.) of this chapter, as established by the board. In addition, by submitting the renewal or reinstatement fee, licensees are certifying compliance with the continuing professional education requirements of this chapter.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-160. Reinstatement.

A. If all of the requirements for renewal of the license as specified in 18VAC160-30-150 are not completed within 30 days of the license expiration date, a reinstatement fee shall be required as established in 18VAC160-30-40.

B. A license may be reinstated for up to one year following the expiration date of the license. An individual who fails to reinstate the license within 12 months after the expiration date shall apply for a new license and meet entry requirements in effect at the time of the submittal of the new application. Such individual shall be deemed to be eligible to sit for the examination for the same category and classification of license as the expired license.

C. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to the prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-170. Status of license during period prior to reinstatement.

A licensee who applies for reinstatement of the license shall be subject to all laws and regulations as if the licensee had been continuously licensed. The licensee shall remain under and be subject to the disciplinary authority of the board during this entire period.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-180. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license for the same reasons as the board may refuse initial licensure or discipline a licensee. The licensee has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

The board may deny renewal or reinstatement of a license if the licensee has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid monetary

penalties and costs imposed by the board.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part IV. Continuing Professional Education**18VAC160-30-190. Continuing professional education.**

A. Each licensee shall have completed the following number of continuing professional education (CPE) contact hours during each renewal cycle. CPE provisions do not apply for the renewal of licenses that were held for less than two years on the date of expiration.

1. Class 1, Class 2, and Class 3 waterworks and wastewater works operators shall obtain a minimum of 20 contact hours.
2. Class 4 waterworks and wastewater works operators shall obtain a minimum of 16 contact hours.
3. Class 5 waterworks operators shall obtain a minimum of eight contact hours.
4. Class 6 operators shall obtain a minimum of four contact hours.

B. CPE contact hours completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license. CPE contact hours completed during a licensing renewal cycle to satisfy the CPE requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for any subsequent renewal cycles.

C. The licensee will not receive CPE credit for completing the same continuing education course with the same content more than once during a license period.

D. A licensee may receive CPE credit for teaching a course that otherwise meets the requirements of this chapter; however, additional credit shall not be given for subsequent offerings of a course or activity with the same content within the same licensing cycle. In addition, a licensee may receive two hours of CPE no more than once during a single licensing cycle for the initial development or substantial updating of a CPE course.

E. Safety subjects shall not count for more than one-half of the total required CPE hours.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry**18VAC160-30-20. Application procedures.**

A. All applicants seeking licensure shall submit an application with the appropriate fee specified in 18VAC160-30-40. Application shall be made on forms provided by the board or its agent. By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations. The receipt of an application and the deposit of fees by the board does not indicate approval of the application by the board.

B. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained in this chapter and on the application. Applications will not be considered complete until all required documents are received by the board. An applicant will not be permitted to sit for the applicable board-approved examination until the application is complete and approved.

C. The applicant will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. An individual who fails to complete the application process within 12 months of receipt of the application in the board's office must submit a new application. An applicant has 12 months from approval of the application to pass the board-approved examination. Failure to pass the board-approved examination within 12 months of approval will result in the applicant being required to submit a new application to be considered for licensure.

D. The applicant shall immediately report all changes in information supplied with the application, if applicable, prior to issuance of the license or expiration of the application or examination period.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part IV. Continuing Professional Education

18VAC160-30-200. CPE subject matter for waterworks operators.

A. The following course topics will be accepted for CPE credit for waterworks operators:

1. Waterworks operations;
2. Monitoring, evaluating, and adjusting treatment processes and systems;
3. Operating and maintaining equipment;
4. Security and safety procedures;
5. General science and mathematical principles;
6. Administrative processes and procedures applicable to licensure; and
7. Laws and regulations applicable to the profession.

B. Of the total 20 hours required, a minimum of five contact hours pertaining to utility management is required of Class 1 and Class 2 waterworks operators.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-210. CPE subject matter for wastewater works operators.

A. The following course topics will be accepted for CPE credit for wastewater works operators:

1. Wastewater works operations;
2. Monitoring, evaluating, and adjusting treatment processes and systems;
3. Operating and maintaining equipment;
4. Security and safety procedures;
5. General science and mathematical principles;
6. Administrative processes and procedures applicable to licensure; and
7. Laws and regulations applicable to the profession.

B. Of the total 20 hours required, a minimum of five contact hours pertaining to utility management is required of Class 1 and Class 2 wastewater works operators.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-220. Use of training credits and formal education for CPE credit.

Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in Part V (18VAC160-30-240 et seq.) of this chapter, shall also be acceptable on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one-quarter hour of college credit shall equal 10 CPE credit hours.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-230. Maintenance of CPE.

A. For a period of at least two years following the end of the license renewal cycle for which the CPE was taken, the following evidence shall be maintained to document completion of the required hours of CPE:

1. Evidence of completion of a structured training activity, which shall consist of the name, address, and telephone number of the sponsor;
2. The dates the licensee participated in the training;
3. Description of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

B. The board may conduct an audit of its licensees to ensure compliance with the applicable CPE requirements. Licensees who are selected for audit shall provide the necessary documentation stipulated in this section.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part V. Training Course Approval**18VAC160-30-240. Approval of training courses.**

A. Training courses may be substituted for experience pursuant to the provisions of Part II (18VAC160-30-20 et seq.) of this chapter. With the exception of training courses provided pursuant to 18VAC160-30-280, training courses that may be substituted for required experience must be approved by the board prior to commencing.

B. Each training provider seeking course approval shall submit an application for approval on a form provided by the board. Only classroom, laboratory, and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a provider that is an identifiable organization with a mission statement outlining its functions, structure, process, and philosophy and that has a staff of one or more persons with the authority to administer and coordinate a training course.

2. Training course records. The board will only approve training offered by a provider that maintains training course records for all participants for a minimum of seven years and that has a written policy on retention and release of training course records.
3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, and knowledge of the learning process to be used.
4. Objectives. The board will only approve courses that have a series of stated objectives that are pertinent to the tasks performed by a licensee. The training course content must be consistent with those objectives.
5. Course completion requirements. For successful completion of a training course, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, oral examination, or other similar assessment technique.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-250. Application for training course approval.

A. The board shall consider the following information, to be submitted by the course provider or instructor on forms provided by the board:

1. Course information.

- a. Course title;
- b. Planned audience;
- c. Name of provider;
- d. Name, physical address, email address, and phone number of contact person;
- e. Scheduled presentation dates;
- f. Detailed course schedule, hour-by-hour, including start and ending times;
- g. List of planned breaks;
- h. Scheduled presentation location; and
- i. Identification of the category and classification of license to which the course is applicable and relevancy to the identified license type.

2. Instructor qualifications.

- a. Name of instructor;
- b. Title;
- c. Employer;
- d. Board license number or numbers, if applicable; and
- e. Summary of qualifications to teach the course.

3. Training materials.

- a. Course objectives. A listing of the course objectives stated in terms of the skills and knowledge the participant will be able to demonstrate as a result of the training.

- b. Course outline. A detailed outline showing the planned activities that will occur during the training course, including major topics, planned presentation sequence, laboratory and field activities, audiovisual presentation, and other major activities.
- c. Course reference materials. A list of the name, publisher, and publication date for commercially available publications. For reference materials developed by the course provider or available exclusively through the course, a copy of the reference.
- d. Audiovisual support materials. A listing of any commercially available audiovisual support material that will be used in the program. A brief description of any provider or instructor generated audiovisual material that will be used.
- e. Handouts. Identification of all commercially available handout materials that will be used, as well as copies of all other planned handouts.
4. Determination of successful completion. A description of the means that will be used to assess the learning of each participant to determine successful completion of the training program, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.
- B. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the provider.
1. The board shall consider all of the information listed in subsection A of this section except those items related to specific offerings of the course.
 2. Board approval will apply only to those specific offerings certified by the provider as having been conducted by instructors meeting the established criteria and in accordance with the board-approved course outlines and objectives.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-260. Maintenance of training approval.

- A. At times established by the board, the board may require that course providers that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that the provider continues to comply with the requirements of this chapter. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.
- B. Substantial modifications or changes to the information provided in 18VAC160-30-240 and 18VAC160-30-250 must be reported to the board within 30 days of the change. Failure to report the changes as required may result in the withdrawal of approval by the board.
- C. Any change of the address of the training provider shall be reported in writing within 30 days of the change.
- D. The board may conduct an audit of the training provider to ensure compliance with this chapter.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-270. Withdrawal of approval.

The board may withdraw approval of any provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive manner.
3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, and student records.
4. The provider fails to respond to the board or any of its agents.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-280. Training courses offered by certain entities; board approval not required.

A. Training courses provided by (i) federal, state, or local government agencies; (ii) accredited colleges or universities approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; (iii) a regional or national accreditation association; or (iv) an accrediting agency that is recognized by the U.S. Secretary of Education do not require board approval to be used for experience substitution, provided the training course information submitted to the board includes the following:

1. The course must include the continuing education units awarded by the entity.
2. The course's subject matter must be related to the license category and classification, if applicable, for which experience substitution is sought.

B. The board may request additional information from the provider as necessary to ensure compliance with this section. If such assurance cannot be made by the board, the training course may not be used for experience substitution, or the provider may pursue board approval pursuant to this chapter.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part VI. Standards of Practice and Conduct**18VAC160-30-290. Grounds for disciplinary action.**

The board may place a licensee on probation; impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia; or revoke, suspend, or refuse to renew any license when the licensee has been found to have violated or cooperated with others in violating any provision of the regulations of the board or Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry**18VAC160-30-30. General fee requirements.**

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part VI. Standards of Practice and Conduct**18VAC160-30-300. Maintenance of license.**

- A. No license issued by the board shall be assigned or otherwise transferred.
- B. A licensee shall report, in writing, all changes of address and name to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the licensee holds more than one license, the licensee shall inform the board of all licenses, certificates, and registrations affected by the address change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's failure to report a change of address.
- C. Any change in any of the requirements and qualifications for licensure found in Part II (18VAC160-30-20 et seq.) or Part III (18VAC160-30-150 et seq.) of this chapter shall be reported to the board within 30 days of the change.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-310. Notice of adverse action.

- A. Licensees shall notify the board of the following actions against the licensee:
1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.
 2. Any voluntary surrendering of a related license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.
 3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any (i) misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, or physical injury, or relating to the practice of the profession, or (ii) felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.
- B. The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-320. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), or 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, or any of the regulations of the board.
2. Allowing a license issued by the board to be used by another.

3. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining or renewing a license by false or fraudulent representation.
4. A licensee having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-30-310. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia.
5. Failing to inform the board in writing within 30 days that the licensee was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-30-310.
6. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill, and ability in the performance of the licensee's duties.
7. Having undertaken to perform or performed a professional assignment that the licensee is not qualified to perform by education, experience, training, or any combination thereof.
8. Failing to report a change as required by 18VAC160-30-300.
9. Negligence, misconduct, or incompetence in the practice of the profession.
10. Making any misrepresentation or engaging in acts of fraud or deceit in providing professional services.
11. Failing to adequately supervise and review work performed by licensed or unlicensed employees under direct supervision of the licensee.
12. Submitting or recording or assisting another in the submission or recording of false or misleading operational information relating to the performance and monitoring requirements of a waterworks or wastewater works.
13. Failing to act in providing waterworks and wastewater works operator services in a manner that safeguards the interests of the public.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-330. Conflicts of interest.

The licensee shall:

1. Promptly and fully inform an employer or client of any business association, interest, or circumstance that may influence the licensee's judgment or the quality of service.
2. Not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed to and agreed to by all interested parties in writing.
3. Neither solicit nor accept financial or other valuable consideration from material or equipment suppliers for specifying their products or services.
4. Not solicit or accept gratuities, directly or indirectly, from contractors or their agents or other parties dealing with a client or employer in connection with work for which the licensee is responsible.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-340. Licensee responsibility.

A. The primary obligation of the licensee is to the public. If the licensee's judgment is overruled and not adhered to when advising appropriate parties of circumstances of a substantial threat to the public health, safety, or welfare, the licensee shall inform the employer or client, as applicable, of the possible consequences and notify appropriate authorities.

B. The licensee shall not knowingly associate in a business venture with, or permit the use of the licensee's name by, any person where there is reason to believe that person is engaging in activity of a fraudulent or dishonest nature or is violating any law or regulation of the board.

C. A licensee who has direct knowledge that another individual may be violating any of the provisions of this chapter or the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia shall immediately inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-350. Response to inquiry and provision of records.

A. A licensee must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a licensee of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the licensee was involved, or for which the licensee is required to maintain records. The board may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A licensee shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a licensee must respond to an inquiry by the board or its agent within 21 days.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-360. Wastewater works.

A. A Class 4 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works employing biological mechanical methods (i.e., mechanical treatment process defined as those containing aerated and mixed flows using electrical or outside energy sources) with a design hydraulic capacity greater than 1,000 gallons per day but equal to or less than 0.04 MGD;

2. A wastewater works employing natural treatment methods (referenced in 9VAC25-790-870 as land treatment utilizing a secondary process for pretreatment followed by irrigation, overland flow infiltration-percolation, or combination thereof or aquatic ponds or constructed wetlands) with a design hydraulic capacity greater than 1,000 gallons per day but equal to or less than 1.0 MGD; or

3. Any other wastewater works classified by DEQ or VDH as a Class 4 wastewater works.

B. A Class 3 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) filters or other attached growth contactors, (v) processes utilizing

biological nutrient control, or (vi) processes utilizing land treatment having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

2. A wastewater works using natural treatment methods (referenced in 9VAC25-790-870 as land treatment utilizing a secondary process for pretreatment followed by irrigation, overland flow infiltration-percolation, or combination thereof or aquatic ponds or constructed wetlands) with a design hydraulic capacity greater than 1.0 MGD;

3. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (i.e., ion exchange, reverse osmosis, or electro dialysis) having a design hydraulic capacity greater than 1,000 gallons per day but equal to or less than 0.1 MGD; or

4. A wastewater works classified by DEQ or VDH as a Class 3 or Class 4 wastewater works facility.

C. A Class 2 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons or constructed wetlands, (iii) filters or other attached growth contactors, (iv) processes utilizing biological nutrient control, or (v) processes utilizing land application having a design hydraulic capacity greater than 0.5 MGD but equal to or less than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, (viii) demineralization (i.e., ion exchange, reverse osmosis, or electro dialysis) and having a hydraulic capacity greater than 0.1 MGD but equal to or less than 2.5 MGD; or

3. A wastewater works classified by DEQ or VDH as a Class 2, Class 3, or Class 4 wastewater works.

D. A Class 1 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons or constructed wetlands, (iii) filters or other attached growth contactors, (iv) processes utilizing biological nutrient control, (v) processes utilizing land treatment and having a hydraulic capacity greater than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breaking chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, (viii) demineralization (i.e., ion exchange, reverse osmosis, or electro dialysis) and having a design capacity greater than 2.5 MGD; or

3. A wastewater works classified by DEQ or VDH as a Class 1, Class 2, Class 3, or Class 4 wastewater works.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; Errata, 33:15 VA.R. XXXX March 20, 2017.

18VAC160-30-370. Waterworks.

A. A Class 6 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 400 persons that provides no treatment or employs one or more of the following treatment processes: (i) hypochlorination for disinfection, (ii) corrosion control with calcite or magnesium oxide contactors or solution feed except with caustic, or (iii) sequestration by solution feed; or

2. A waterworks classified by VDH as a Class 6 waterworks.

B. A Class 5 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 400 or more persons that provides no treatment or employs one or more of the following treatment processes: (i) hypochlorination for disinfection, (ii) corrosion control with calcite or magnesium oxide

contactors or solution feed except with caustic, or (iii) sequestration by solution feed; or

2. A waterworks classified by VDH as a Class 5 waterworks.

C. A Class 4 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving fewer than 5,000 persons or having a treatment facility capacity of less than 0.5 MGD and employing one or more of the following: (i) disinfection other than with hypochlorination, (ii) caustic soda feed, (iii) iron and manganese removal, (iv) ion exchange, (v) slow sand filtration, (vi) aeration, (vii) rechlorination other than with hypochlorination, (viii) activated carbon contactors, (ix) membrane or other filtration technologies without chemical coagulation, or (x) fluoridation with a saturator; or

2. A waterworks classified by VDH as a Class 4 waterworks.

D. A Class 3 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving fewer than 5,000 persons or having a treatment facility capacity less than 0.5 MGD, whichever is greater, and employing conventional filtration or chemical coagulation in combination with membrane filtration;

2. A waterworks or treatment facility serving 5,000 or more persons or having a treatment facility capacity of 0.5 MGD or more, whichever is greater, and employing one or more of the following: (i) disinfection other than with hypochlorination, (ii) caustic soda feed, (iii) iron and manganese removal, (iv) ion exchange, (v) slow sand filtration, (vi) aeration, (vii) rechlorination other than with hypochlorination, (viii) activated carbon contactors, (ix) membrane or other filtration technologies without chemical coagulation, or (x) fluoridation with a saturator or acid feed;

3. A waterworks or treatment facility employing fluoridation with other than a saturator not considered a Class 1 or Class 2 waterworks; or

4. A waterworks classified by VDH as a Class 3 waterworks.

E. A Class 2 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving 5,000 or more persons but fewer than 50,000 persons or having a treatment facility capacity of 0.5 MGD or more but less than 5.0 MGD, whichever range applies, and employing rapid rate conventional filtration chemical coagulation in combination with membrane filtration;

2. A waterworks or treatment facility serving fewer than 50,000 persons or having a treatment facility capacity of less than 5.0 MGD employing high rate conventional filtration; or

3. A waterworks classified by the VDH as a Class 2 waterworks.

F. A Class 1 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving 50,000 or more persons or having a treatment facility capacity of 5.0 MGD or more and employing conventional filtration or chemical coagulation in combination with membrane filtration; or

2. A waterworks classified by VDH as a Class 1 waterworks.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry

18VAC160-30-40. Fee schedule.

Fee Type	Fee Amount	When Due
Initial application (for each	\$100	With application

profession, class, and category of license)		
Renewal (for each profession, class, and category of license)	\$80	With renewal application
Reinstatement (for each profession, class, and category of license)	\$105 (renewal fee + \$25 reinstatement fee)	With reinstatement application

For wastewater works operator licenses expiring on February 28, 2018, and waterworks operator licenses expiring on February 28, 2019, the renewal fee shall be \$50. For reinstatement applications received after February 28, 2018, and on or before February 29, 2020, the total reinstatement fee shall be \$75.

Statutory Authority

§§ 54.1-113 and 54.1-201 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; amended, Virginia Register Volume 34, Issue 7, eff. January 1, 2018.

18VAC160-30-50. Examination fee.

The fee for examination or reexamination is subject to charges to the department by an outside vendor based on a contract entered into in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-60. General requirements for licensure.

A. In addition to the specific qualifications for each category and classification of licensure, each applicant for licensure shall meet the requirements provided in this section.

1. The applicant shall be at least 18 years old.
2. The applicant shall disclose his mailing address. A post office box is only acceptable as a mailing address when a physical address is also provided.
3. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information.
 - a. All felony convictions.
 - b. All misdemeanor convictions in any jurisdiction that occurred within three years of the date of application.

Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

B. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

C. The applicant shall report any suspension, revocation, or surrender of a license, certification, or registration in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure. The board, at its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrenders of licenses based on disciplinary action by any jurisdiction.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-70. Examination procedures and conduct.

A. Upon approval of the application, the board will notify the applicant of his eligibility to take the applicable examination. The license will not be issued prior to receipt of a passing score for the applicable examination.

B. An applicant who does not receive a passing score within one year after the date of approval of the application by the board to sit for the examination, must submit a new application and meet the entry requirements in effect at the time of submittal of the new application.

C. The applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include all written instructions communicated prior to the examination date and all instructions communicated at the site, either written or oral, on the date of examination. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination may be grounds for denial of the application, voiding of examination scores, or any combination thereof.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-80. Individuals certified or licensed in another jurisdiction.

An applicant holding a valid license or certificate in another jurisdiction who meets the requirements of this chapter, including having equivalent experience and education, shall pass a board-approved examination to become licensed.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-30-90. License required.

A. No individual shall serve as the operator of a waterworks or wastewater works without possessing a valid category of license issued by the board in a classification equal to or greater than the classification of the applicable waterworks or wastewater works.

B. An individual cannot simultaneously hold two licenses of different classifications in the same category.

C. Experience used to qualify for licensure must be obtained under the direct supervision of an operator holding a valid license of the same category and of a classification equal to or higher than the classification of the waterworks or wastewater works at which the experience was gained.

D. Experience operating and maintaining water distribution systems shall only be considered for Class 5 or Class 6 waterworks operator license applicants.

E. Experience limited solely to the operation and maintenance of wastewater collection systems, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as an operator or an operator-in-training.

F. Provisional licensure alone shall not authorize an individual to serve as the operator of a classified waterworks or wastewater works facility.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

FORMS (18VAC160-30).

[Waterworks Operator License Application, A436-1955EXLIC-v1 \(eff. 4/2017\)](#)

[Provisional Waterworks Operator License Application, A436-1955PLIC-v2 \(eff. 4/2017\)](#)

[Wastewater Works Operator License Application, A436-1965EXLIC-v2 \(eff. 4/2017\)](#)

[Provisional Wastewater Works Operator License Application, A436-1965PLIC-v2 \(eff. 4/2017\)](#)

[Waterworks and Wastewater Works Operator - Provisional License Change in Classification Application, A436-1955_65CHG-v1 \(eff. 4/2017\)](#)

[Out-of-State Facility Description and Experience Verification Application, A436-19STATE_EXP-v3 \(eff. 4/2015\)](#)

[Waterworks and Wastewater Works Operator Virginia Experience Verification Application, A436-19WWEXP-v4 \(eff. 4/2017\)](#)

[Provisional Description and Experience Verification Application, A436-1955_65PEXP-v3 \(eff. 12/2014\)](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

[Training Course Approval Application, A465-19CRS-v5 \(eff. 3/2020\)](#)

[Education and Training Substitution Form, A436-19EDTRv4, \(eff. 4/2017\)](#)

[Wastewater Works Operator Class 4 Application - Department of Corrections Apprenticeship Program, A436-1965APLIC-v3 \(eff. 6/2019\)](#)

Statutory Authority

Historical Notes

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.



Haughwout, Joseph <joseph.haughwout@dpor.virginia.gov>

Fwd: public comment Virginia Waterworks and Wastewater Works Operators License Regulations

1 message

Haughwout, Joseph <joseph.haughwout@dpor.virginia.gov>
To: Joseph Haughwout <joseph.haughwout@dpor.virginia.gov>

Mon, Nov 9, 2020 at 2:00 PM

----- Forwarded message -----

From: [REDACTED] <[REDACTED]>

Date: Mon, Nov 9, 2020 at 1:16 PM

Subject: public comment Virginia Waterworks and Wastewater Works Operators License Regulations

To: <trisha.henshaw@dpor.virginia.gov>

November 9, 2020

Below are my comments respecting the review of 18VAC160-30-10:

At 30-10, there should be a definition provided for an "operator in training"--how they are so designated, what qualifications they must have, how long they may work in that status, what is their responsibility and authority versus operators and the direct supervisor, etc. I understand that a definition does appear elsewhere somewhere in DEQ's regulations.

At 30-20, consider eliminating the 12 months term of application approval language that requires submission of a new application. As the Board is aware, many applicants are taking the examination multiple times, and this is sometimes over a period of time beyond the current 12 month limit on the application.

At 30-80, if it is the Board's pleasure and intent to permit applicants who have passed an ABC examination in another jurisdiction to come into Virginia to operate in the same category and classification without passing "a board-approved [Virginia ABC] examination to become licensed" in Virginia, so long as they meet equivalent experience requirements, then this regulation needs revision to so read.

At 30-90, although I think I understand the intent of paragraph E, specifically with regard to only collection system operation, still I think it would be more equitable and sensible to allow some experience credit for so-called "non-operating duties" inasmuch as they are all part of the job description of many wastewater operators and contribute to knowledge and understanding of the profession.

At 30-200 and 30-210, please make it clear that the Board does not approve providers for continuing professional education (CPE) courses, and that neither does the Board approve individual CPE courses. This is an area of long-running and ongoing confusion, and frankly, one which certain on-line providers have exploited--and continue to exploit--purely for marketing purposes. This confusion and distinction vis-a-vis training credit courses should be clarified.

Finally, anything that could be added anywhere as appropriate to provide greater clarity on the question of reciprocity would be helpful.

Respectfully submitted,

Dennis R. Wanless

11/9/2020

Commonwealth of Virginia Mail - Fwd: public comment Virginia Waterworks and Wastewater Works Operators Licensing Regulations

Dennis R. Wanless
D.R. Wanless & Associates LLC
PO Box 655
Elon NC 27244

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and are not to be construed as regulation or official Board position.
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BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Summary of Comments for Periodic Review of Waterworks and Wastewater Works Operators Licensing Regulations

Following is the summary of comments received during the public comment period (October 26, 2020, to November 16, 2020) regarding the Board’s periodic review of the Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30). The comments below represent comments received on the regulation. During the public comment period, the Board received comments from one commenter.

	Regulation *#	Summary of Comment(s)	Draft Board Response
	Commenter		
1	160-30 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>

DRAFT CONTINGENT ON BOARD REVIEW AND APPROVAL

			<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>
2	160-30	<p>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>	<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 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</p>

DRAFT CONTINGENT ON BOARD REVIEW AND APPROVAL

			retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.
3	160-30	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.	The Board thanks the commenter.
			<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>
4	160-30	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 part of the job description of many wastewater operators and contribute to knowledge and understanding of the profession.	The Board thanks the commenter.
			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 <i>include</i> the listed items; experience that is limited to the listed items will not qualify an applicant for licensure.

DRAFT CONTINGENT ON BOARD REVIEW AND APPROVAL

			<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>
5	160-30	<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</p>

DRAFT CONTINGENT ON BOARD REVIEW AND APPROVAL

			<p>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 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>
6	160-30	<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</p>

DRAFT CONTINGENT ON BOARD REVIEW AND APPROVAL

			<p>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>
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Agency Department of Professional and Occupational Regulation

Board

Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals

Chapter **Onsite Sewage System Professionals Licensing Regulations**
[18 VAC 160 - 40]

Review 2009

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 10/6/2020

Review Announcement

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals is conducting a periodic review and small business impact review of VAC citation: 18 VAC 160-40, title of regulation: Onsite Sewage System Professionals Licensing Regulations.

The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 26, 2020, and ends on November 16, 2020.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Name: Trisha Henshaw, Title: Executive Director, Address: DPOR, 9960 Mayland Drive, Suite 400, City: Richmond, State: Virginia, Zip: 23233, Telephone: (804)367-8595, FAX: (866)350-5354, email address: waterwasteoper@dpor.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information

Name / Title: Trisha Henshaw / *Board Executive Director*

Address: 9960 Mayland Drive
Suite 400
Richmond, VA 23233

Email Address: waterwasteoper@dpor.virginia.gov

Telephone: (804)367-8595 FAX: (866)350-5354 TDD: (-)

Publication Information and Public Comment Period

Published in the Virginia Register on 10/26/2020 [Volume: 37 Issue: 5]

Comment Period begins on the publication date and ends on 11/16/2020

[Comments Received: 1](#)

Review Result

Pending

Attorney General Certification

Result of Review: Certified

 [Review Memo](#) 10/16/2020

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Virginia Administrative Code
Title 18. Professional And Occupational Licensing
Agency 160. Board For Waterworks And Wastewater Works Operators And Onsite Sewage System Professionals
Chapter 40. Onsite Sewage System Professionals Licensing Regulations

Part I. Definitions

18VAC160-40-10. Definitions.

A. Section 54.1-2300 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Board"

"Onsite sewage system"

"Operator"

"Wastewater works"

B. The following words, terms, and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Alternative onsite sewage system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Alternative onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional and alternative onsite sewage systems.

"Alternative onsite sewage system operator" means an individual licensed by the board to operate and maintain conventional and alternative onsite sewage systems.

"Alternative onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effect of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional and alternative onsite sewage systems suitable for the soils.

"Applicant" means an individual who submits an application with the appropriate fee and other required documentation.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Authorized onsite soil evaluator" means an individual holding an authorized onsite soil evaluator certification issued by the Virginia Department of Health that was valid on June 30, 2009.

"Category" means journeyman or master as applicable to the professionals under the board's purview.

"Class" means conventional or alternative as applicable to the professionals under the board's purview.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Conventional onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional onsite sewage systems.

"Conventional onsite sewage system operator" means an individual licensed by the board to operate and maintain conventional onsite sewage systems.

"Conventional onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional onsite sewage systems suitable for the soils.

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

"Direct supervision" means being immediately available and fully responsible for the provision of onsite sewage system services regulated pursuant to Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 and this chapter.

"Interim license" refers to the initial issuance of professional licenses during the implementation of the onsite sewage system professionals licensure program. Such licenses were limited to four years and not renewable.

"Journeyman" means an individual who possesses the minimum skills and competency to install or maintain onsite sewage systems or assist in the evaluation of soil sites as suitable for conventional and alternative onsite sewage systems and to design onsite sewage systems under the direct supervision of a master licensee.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without such license.

"Maintenance" or "maintain" means, unless otherwise provided in local ordinance, (i) performing adjustments to equipment and controls or (ii) in-kind replacement of normal wear and tear parts that do not require a construction permit for adjustment or replacement of the component, such as light bulbs, fuses, filters, pumps, motors, sewer lines, conveyance lines, distribution boxes, header lines, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Notwithstanding any local ordinance, "maintenance" does not include replacement of tanks, drainfield piping, subsurface drainfields, or work requiring a construction permit and a licensed onsite sewage system installer. Unless otherwise prohibited by local ordinance, a conventional onsite sewage system installer or an alternative onsite sewage system installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.

"Master" means an individual who possesses the minimum skills and competency to install or maintain onsite sewage systems or evaluate soil sites as suitable for conventional and alternative onsite sewage systems and to design conventional and alternative onsite sewage systems.

"Operate" means the act of (i) placing into or taking out of service a unit process or (ii) making or causing adjustments in the operation of a unit process at a treatment works.

"Profession" means the practice of onsite soil evaluation, onsite sewage system installation, and onsite sewage system operation.

"Professional" means an onsite sewage system installer, onsite sewage system operator, or onsite soil evaluator who is licensed pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in this Commonwealth.

"Renewal" means the process and requirements for periodically approving the continuance of a license.

"Sewage" means water-carried and nonwater-carried human excrement or kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm, or other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Training credit" means a unit of board-approved training or formal education completed by an individual that may be used to substitute for experience when applying for a license.

"Treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes including 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 processes or (ii) used for ultimate disposal or residues or effluent resulting from such treatment.

"VDH" means the Virginia Department of Health.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; amended, Virginia Register Volume 34, Issue 26, eff. September 19, 2018.

Part II. Entry

18VAC160-40-100. Full-time experience or equivalent.

For the purpose of this part, experience requirements are expressed in terms of calendar periods of full-time employment as an operator, installer, or onsite soil evaluator in the same class for which licensure is sought.

1. A year of full-time employment is defined as a minimum of 1,760 hours during a 12-month period or a minimum of 220 workdays in a 12-month period. A workday is defined as performing or assisting in the duties of an installer, operator, or onsite soil evaluator to the extent required for the proper installation or maintenance of onsite sewage systems or the evaluation of soil and soil properties for suitability as locations for onsite sewage systems. More than 1,760 hours or 220 workdays during a 12-month period will not be considered as more than one year of full-time employment.

2. Partial credit may be given for actual hours of work experience if the applicant works less than full time.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-105. Master licenses; conversion of licenses on April 1, 2017.

A. An individual holding a current license issued by the board that was valid on March 31, 2017, will be issued a master license in the same class and category of license, and with the same expiration date.

1. A conventional onsite sewage system installer license that is current on March 31, 2017, will be converted to a master conventional onsite sewage system installer license.

2. An alternative onsite sewage system installer license that is current on March 31, 2017, will be converted to a master alternative onsite sewage system installer license.

3. A conventional onsite sewage system operator license that is current on March 31, 2017, will be converted to a master conventional onsite sewage system operator license.

4. An alternative onsite sewage system operator license that is current on March 31, 2017, will be converted to a master alternative onsite sewage system operator license.

5. A conventional onsite soil evaluator license that is current on March 31, 2017, will be converted to a master conventional onsite soil evaluator license.

6. An alternative onsite soil evaluator license that is current on March 31, 2017, will be converted to a master alternative onsite soil evaluator license.

B. Any license issued pursuant to this section may be subject to disciplinary action in accordance with this chapter for any violation of the regulations that occurred under the license held prior to conversion in accordance with this section.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part III. Onsite Sewage System Installers

18VAC160-40-110. License required.

A. No individual shall install a conventional or alternative onsite sewage system without a valid onsite sewage system installer license issued by the board in the appropriate class.

B. An individual cannot simultaneously hold valid master and journeyman onsite sewage system installer licenses in the same class. Issuance of a master onsite sewage system installer license in a specific class shall void the journeyman onsite sewage system installer license in the same class.

C. An individual cannot simultaneously hold valid conventional and alternative master onsite sewage system installer licenses or conventional and alternative journeyman onsite sewage system installer licenses. Issuance of a master alternative onsite sewage system installer license shall void the conventional onsite sewage system installer license.

D. A journeyman onsite sewage system installer must work under the direct supervision of a licensed master onsite sewage system installer with the appropriate class of license. A master onsite sewage system installer is responsible for supervising the provision of onsite sewage system installations by any journeyman onsite sewage system installers under his direct supervision.

E. Experience used to qualify for licensure cannot be verified by a journeyman onsite sewage system installer.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-120. Qualifications for journeyman conventional onsite sewage system installer licenses.

An applicant for licensure as a journeyman conventional onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

	Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
1.	Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors	No	No	Six months of full-time experience assisting with the installation of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
2.	None	No	No	One year of full-time experience assisting with the installation of conventional or alternative onsite sewage systems verified by one or

			more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
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Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-130. Qualifications for master conventional onsite sewage system installer licenses.

An applicant for licensure as a master conventional onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

Prerequisites		Exam Required	Education Required	Documented Qualifying Experience
1.	Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors	Yes	20 hours of training approved by the board covering basic installation of conventional or alternative onsite sewage systems	One year of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
2.	Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors	Yes	No	Two years of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
3.	Interim conventional onsite sewage system installer or journeyman onsite sewage system installer license	Yes	20 hours of training approved by the board covering basic installation of conventional or alternative onsite sewage systems	Two years of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
4.	Interim conventional onsite sewage system installer journeyman onsite sewage system installer license	Yes	No	Three years of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; Errata, 33:16 VA.R. 1944 April 3, 2017.

18VAC160-40-140. [Reserved].**Statutory Authority**

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-150. Qualifications for journeyman alternative onsite sewage system installer licenses.

An applicant for licensure as a journeyman alternative onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

	Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
1.	Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors	No	No	One year of full-time experience assisting with the installation of alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
2.	None	No	No	Two years of full-time experience assisting with the installation of alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-160. Qualifications for master alternative onsite sewage system installer licenses.

An applicant for licensure as a master alternative onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

	Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
1.	Employee, owner, director, or officer of a properly licensed contractor with a sewage	Yes	No	Two years of full-time experience installing alternative onsite sewage systems verified by one or more of the

	disposal system (SDS) specialty issued by the Virginia Board for Contractors			following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
2.	Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors	Yes	20 hours of training approved by the board covering the basic installation of alternative onsite sewage systems	18 months of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
3.	No	Yes	20 hours of training approved by the board covering basic installation of alternative onsite sewage systems	Three years of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator
4.	Interim alternative onsite sewage system installer or conventional onsite sewage system installer license	Yes	No	18 months of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part IV. Onsite Sewage System Operators**18VAC160-40-170. License required.**

A. No individual shall operate a conventional or alternative onsite sewage system without a valid onsite sewage system operator license issued by the board in the appropriate class.

B. An individual cannot simultaneously hold valid master and journeyman onsite sewage system operator licenses in the same class. Issuance of a master onsite sewage system operator license in a specific class shall void the journeyman onsite sewage system operator license in the same class.

C. An individual cannot simultaneously hold valid conventional and alternative master onsite sewage system operator licenses or conventional and alternative journeyman onsite sewage system operator licenses. Issuance of a master alternative onsite sewage system operator license shall void the conventional onsite sewage system operator license.

D. A journeyman onsite sewage system operator must work under the direct supervision of a licensed master onsite sewage system operator with the appropriate class of license. A master onsite sewage system operator is responsible for supervising the operation of the onsite sewage system by any journeyman onsite sewage system operator under his responsibility.

E. Experience used to qualify for licensure cannot be verified by a journeyman onsite sewage system operator.

F. No individual shall act as an alternative onsite sewage system operator of an alternative onsite sewage system that exceeds 10,000 gallons per day design flow without possessing a Class 4 or higher wastewater works operator license in addition to an alternative onsite sewage system operator license.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-180. Qualifications for journeyman conventional onsite sewage system operator licenses.

An applicant for licensure as a journeyman conventional onsite sewage system operator shall furnish acceptable documentation that the following qualification has been met:

Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
None	No	No	Six months of full-time experience assisting with the operation and maintenance of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-190. Qualifications for master conventional onsite sewage system operator licenses.

An applicant for licensure as a master conventional onsite sewage system operator shall furnish acceptable documentation that one of the following qualifications has been met:

	Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
1.	Wastewater works operator license	Yes	No	None
2.	No	Yes	10 hours of education approved by the board covering the basics of operation and maintenance of conventional	Six months of full-time experience in the operation and maintenance of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator

			onsite sewage systems	
3.	No	Yes	No	One year of full-time experience in the operation and maintenance of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry

18VAC160-40-20. Application procedures.

A. All applicants seeking licensure shall submit an application with the appropriate fee in 18VAC160-40-40. Applications shall be made on forms provided by the board.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval of the application by the board.

B. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained in this chapter and on the application. Applications will not be considered complete until all required documents are received by the board. If an examination is required for licensure, the applicant will not be permitted to sit for the applicable board-approved examination until the application is complete and approved.

C. The applicant will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. An individual who fails to complete the process within 12 months of receipt of the application in the board's office must submit a new application. If applicable, the applicant has 12 months from approval of the application to pass the board-approved examination. Failure to pass the board-approved examination within 12 months of approval will result in the applicant being required to submit a new application to be considered for licensure.

D. The applicant shall immediately report all changes in information supplied with the application, if applicable, prior to the issuance of the license or expiration of the application or examination period.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part IV. Onsite Sewage System Operators

18VAC160-40-200. Qualification for exemption from examination for master conventional onsite sewage system operator applicants.

Applicants seeking licensure as a master conventional onsite sewage system operator may be exempt from the examination provided the applicant:

1. Is able to satisfactorily demonstrate that he has been actively engaged in performing the duties of a conventional onsite sewage system operator for at least four years. Documentation of qualifying experience may be verified by a master conventional or alternative onsite soil evaluator, a master conventional or alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator; and
2. Meets the requirements of 18VAC160-40-60.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-210. Qualifications for journeyman alternative onsite sewage system operator licenses.

An applicant for licensure as a journeyman alternative onsite sewage operator shall furnish acceptable documentation that one of the following qualifications has been met:

	Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
1.	None	No	20 hours of education approved by the board covering the basics of operation and maintenance of alternative onsite sewage systems	One year of full-time experience assisting with the operation and maintenance of alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative sewage system operator, a professional engineer, or an authorized onsite soil evaluator
2.	None	No	None	Two years of full-time experience assisting with the operation and maintenance of alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative sewage system operator, a professional engineer, or an authorized onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-220. Qualifications for master alternative onsite sewage system operator licenses.

An applicant for licensure as a master alternative onsite sewage system operator shall furnish acceptable documentation that one of the following has been met:

	Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
1.	Held or holds a conventional onsite sewage system operator license	Yes	10 hours of training approved by the board covering the basics of operation and maintenance of	One year of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the

			alternative onsite sewage systems	following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator
2.	Held or holds a conventional onsite sewage system operator license	Yes	No	18 months of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator
3.	None	Yes	20 hours of training approved by the board covering the basics of operation and maintenance of alternative onsite sewage systems	Two years of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator
4.	Wastewater works operator license	Yes	No	Six months of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator
5.	Wastewater works operator license	Yes	20 hours of training approved by the board in basics of operation and maintenance of alternative onsite sewage systems	No

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part V. Onsite Soil Evaluator**18VAC160-40-230. License required.**

A. Notwithstanding the provisions of Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, no individual shall perform the duties of an onsite soil evaluator without possessing a valid license issued by the board.

B. An individual cannot simultaneously hold master and journeyman onsite soil evaluator licenses in the same class. Issuance of a master onsite soil evaluator license in a specific class shall void the journeyman onsite soil evaluator license in the same class.

C. An individual cannot simultaneously hold valid conventional and alternative master onsite soil evaluator licenses or conventional and alternative journeyman onsite soil evaluator licenses. Issuance of an alternative master onsite soil evaluator license shall void the conventional onsite soil evaluator license.

D. A journeyman onsite soil evaluator must work under the direct supervision of a master onsite soil evaluator with the appropriate class of license. A master onsite soil evaluator of an equal or greater class is responsible for supervising the provision of onsite soil evaluations and designs by any journeyman onsite soil evaluator under his responsibility.

E. Experience to qualify for licensure cannot be verified by a journeyman onsite soil evaluator.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-240. Qualifications for journeyman conventional onsite soil evaluator licenses.

An applicant for licensure as a journeyman conventional onsite soil evaluator shall furnish acceptable documentation that one of the following has been met:

	Prerequisites	Exam Required	Education Required	Documented Qualifying Experience
1.	Virginia professional soil scientist license	No	No	No
2.	No	No	No	One and one-half years of full-time experience assisting in the evaluation of site and soil conditions and design of conventional onsite sewage systems verified by one or more of the following: an authorized soil evaluator, a professional engineer, or an onsite soil evaluator
3.	No	No	VDH onsite sewage system training program	One year of full-time experience assisting in the evaluation of site and soil conditions and design of conventional onsite sewage systems verified by one or more of the following: an authorized soil evaluator, a professional engineer, or an onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-250. Qualifications for master conventional onsite soil evaluator licenses.

An applicant for licensure as a master conventional onsite soil evaluator shall furnish acceptable documentation that one of the following qualifications has been met:

Prerequisites		Exam Required	Education Required	Documented Qualifying Experience
1.	No	Yes	Master's or bachelor's degree	Two years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an onsite soil evaluator
2.	No	Yes	Associate's degree	Three years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an onsite soil evaluator
3.	No	Yes	VDH onsite sewage system training program	Two years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an onsite soil evaluator
4.	Journeyman or interim conventional onsite soil evaluator	Yes	No	Three years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an onsite soil evaluator
5.	Virginia professional soil scientist license	Yes	No	One year of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an onsite soil evaluator.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-260. Qualifications for journeyman alterantive onsite soil evaluator licenses.

An applicant for licensure as a journeyman alternative onsite soil evaluator shall furnish acceptable documentation that one of the following qualifications has been met:

Prerequisites		Exam Required	Education Required	Documented Qualifying Experience
1.	Virginia professional soil scientist license	No	No	One year of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator , a professional engineer, or an alternative soil evaluator
2.	Possess or held either a valid interim alternative onsite soil evaluator license or a conventional onsite soil evaluator license	No	No	One year of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator a professional engineer, or an alternative soil evaluator
3.	An authorized onsite soil evaluator	No	No	One year of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an alternative soil evaluator
4.	No	No	No	Two years of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator , a professional engineer, or an alternative soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; Errata, 33:15 VA.R. XXXX march 20, 2017.

18VAC160-40-270. Qualifications for master alternative onsite soil evaluator licenses.

An applicant for licensure as a master alternative onsite soil evaluator shall furnish acceptable documentation that one of the following qualifications has been met:

Prerequisites		Exam Required	Education Required	Documented Qualifying Experience
1.	No	Yes	Master's or	Two years of full-time experience

			bachelor's degree	evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an alternative onsite soil evaluator
2.	No	Yes	Associate's degree	Three years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an alternative onsite soil evaluator
3.	Held or holds a conventional onsite soil evaluator license, interim alternative onsite soil evaluator license, journeyman alternative onsite soil evaluator license, or authorized onsite soil evaluator license	Yes	No	Two years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an alternative onsite soil evaluator
4.	No	Yes	No	Four years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an alternative onsite soil evaluator
5.	Virginia licensed professional soil scientist	Yes	No	Two years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an alternative onsite soil evaluator

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-275. Verification of experience by authorized onsite soil evaluators.

An authorized onsite soil evaluator who is verifying experience pursuant to Part II of this chapter and who holds no other license listed as qualified to verify experience may only verify experience obtained before July 1, 2009.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-280. Acceptable degree programs and verification procedures.

A. Applicants seeking to qualify for licensure based on completion of an associate's, bachelor's, or master's degree shall submit an official transcript from the school where the applicable degree was obtained. Only degrees from an accredited college or university that is approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education will be considered. The following degrees shall be considered to qualify in accordance with 18VAC160-40-250 and 18VAC160-40-270:

1. Bachelor's or master's degree in soil science, biology, chemistry, engineering, environmental science, geology, agronomy, earth science, or environmental health.
2. Associate's degree in wastewater works, environmental science, or engineering technology.
3. Bachelor's degree in a related physical, biological, environmental, or chemical science that includes a minimum of 40 semester credit hours in any combination of science and math.

B. Any applicant who has earned a degree from an institution outside of the United States shall have the degree authenticated and evaluated by an education credential evaluation services. The board reserves the right to reject any evaluation submitted by the applicant.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part VI. Renewal and Reinstatement**18VAC160-40-290. Expiration and renewal.**

A. A license shall expire two years from the last day of the month in which it was issued.

B. Prior to the expiration date shown on the license, the board shall mail a renewal notice to the licensee's address of record. The licensee shall return a renewal notice and the applicable renewal fee. Failure to receive a renewal notice from the board does not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee as an application for renewal.

C. By submitting the renewal fee, the licensee is certifying his continued compliance with the Standards of Practice and Conduct (Part IX (18VAC160-40-440 et seq.) of this chapter) as established by the board. In addition, by submitting the renewal fee, licensees are certifying compliance with the continuing professional education requirements of this chapter.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry

18VAC160-40-30. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part VI. Renewal and Reinstatement**18VAC160-40-300. Reinstatement.**

A. If all the requirements for renewal of the license as specified in 18VAC160-40-290 are not completed within 30 days of the license expiration date, a reinstatement fee shall be required as established in 18VAC160-40-40.

B. A license may be reinstated for up to one year following the expiration date of the license. Any licensee who fails to reinstate the license within 12 months after the expiration date shall apply for a new license and meet entry requirements in effect at the time of submittal of the new application. The individual shall be deemed to be eligible to sit for the examination for the same profession, class, and category of license as the expired license, if an examination is applicable.

C. By submitting the reinstatement fee, the licensee is certifying his continued compliance with the Standards of Practice and Conduct (Part IX (18VAC160-40-440 et seq.) of this chapter) as established by the board. In addition, by submitting the reinstatement fee, licensees are certifying compliance with the continued professional education requirements of this chapter.

D. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-310. Status of license during period prior to reinstatement.

A licensee who applies for reinstatement of the license shall be subject to all laws and regulations as if the regulant had been continuously licensed. The licensee shall remain under and be subject to the disciplinary authority of the board during the entire period.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-320. Board discretion to deny renewal or reinstatement.

A. The board may deny renewal or reinstatement of license for the same reasons as the board may refuse initial licensure or discipline a licensee. The licensee has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The board may deny renewal or reinstatement of a licensee if the licensee has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid monetary penalties and costs imposed by the board.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part VII. Continuing Professional Education**18VAC160-40-330. Continuing professional education.**

A. Each licensee shall have completed the following number of continuing professional education (CPE) contact hours during each renewal cycle. CPE provisions do not apply to licenses that were held for less than two years on the date of expiration.

License Type	CPE Contact Hours Required
1. Master alternative onsite soil evaluator	16
2. Master alternative onsite sewage system installer	16
3. Master alternative onsite sewage system operator	16
4. Master conventional onsite soil evaluator	12
5. Master conventional onsite sewage system installer	12
6. Master conventional onsite sewage system operator	8
7. Journeyman alternative onsite soil evaluator	8
8. Journeyman alternative onsite sewage system installer	8
9. Journeyman alternative onsite sewage system operator	8
10. Journeyman conventional onsite soil evaluator	4
11. Journeyman conventional onsite sewage system installer	4
12. Journeyman conventional onsite sewage system operator	4

B. CPE courses completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license. CPE courses completed during a license renewal cycle to satisfy the CPE requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for subsequent renewal cycles.

C. The licensee will not receive credit for completing the same CPE course with the same content more than once during a license period.

D. A licensee may receive CPE credit for teaching a course that otherwise meets the requirements of this chapter; however, additional credit shall not be given for subsequent offering of a course or activity with the same content within the same licensing cycle. In addition a licensee may receive two hours of CPE no more than once during a single licensing cycle for the initial development or substantial updating of a CPE course.

E. For all licenses, safety subjects shall not count for more than one half of the total required CPE hours.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; Errata, 33:13 VA.R. 1821 February 20, 2017.

18VAC160-40-340. CPE subject matter for onsite sewage system installers.

The following course topics will be accepted for CPE credit for onsite sewage system installers:

1. Sewage system installation;
2. Operating and maintaining equipment;

3. Security and safety procedures;
4. General science and mathematical principles;
5. Administrative knowledge and procedures applicable to the profession;
6. Laws and regulations applicable to the profession;
7. Monitoring, evaluating and adjusting treatment processes (alternative onsite sewage system installers only); and
8. Management and supervision principles (master onsite sewage system installers only; maximum of four contact hours).

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-350. CPE subject matter for onsite sewage system operators.

The following course topics will be accepted for CPE credit for onsite sewage system operators:

1. Onsite system operations;
2. Monitoring, evaluating, and adjusting treatment processes;
3. Operating and maintaining equipment;
4. Security and safety procedures;
5. General science and mathematical principles;
6. Administrative knowledge applicable to the profession;
7. Laws and regulations applicable to the profession; and
8. Management and supervision principles (applicable to master onsite sewage system operators only; maximum of four contact hours).

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-360. CPE subject matter for onsite soil evaluators.

The following course topics will be accepted for CPE credit for onsite soil evaluators:

1. Site and soil evaluations;
2. Security and safety procedures;
3. Mapping, cartography, and geographic information systems;
4. System design;
5. Inspections;
6. General science and mathematical principles;

7. Administrative knowledge and procedures applicable to the profession;
8. Laws and regulations applicable to the profession; and
9. Management and supervision principles (applicable to master onsite soil evaluators only; maximum of four contact hours).

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-370. Use of training credits and formal education for CPE credit.

Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in 18VAC160-40-70 or 18VAC160-40-280, shall also be acceptable on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one-quarter hour of college credit shall equal 10 CPE hours. The training credits or formal education must be applicable to the license for which CPE credit is sought.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-380. Maintenance of CPE.

A. For a period of at least two years following the end of the license renewal cycle for which the CPE was taken, the following evidence shall be maintained to document completion of the required CPE.

1. Evidence of completion of a structured training activity, which shall consist of the name, address, and telephone number of the sponsor;
2. The dates the licensee participated in the training;
3. Description of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

B. The board may conduct an audit of its licensees to ensure compliance with the applicable CPE requirements. Licensees who are selected for audit shall provide the necessary documentation stipulated in this section.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part VIII. Training Course Approval**18VAC160-40-390. Approval of training courses.**

A. Training courses may be substituted for experience pursuant to the provisions of 18VAC160-40-70. With the exception of training courses provided pursuant to 18VAC160-40-430, training courses that may be substituted for required experience must be approved by the board prior to commencing in accordance with the provisions of this section.

B. Each training provider seeking course approval shall submit an application for approval on a form provided by the board. Only classroom, laboratory, and field trip contact time will be used to compute training credits. No credit will be

given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a provider that is an identifiable organization with a mission statement outlining its functions, structure, process, and philosophy and that has a staff of one or more persons with the authority to administer and coordinate the training course.
2. Training course records. The board will only approve training offered by a provider that maintains records for all participants for a minimum of seven years and that has a written policy on retention and release of records.
3. Instructors. The board will only approve training conducted by personnel who have demonstrated competency in the subject being taught, an understanding of the learning objective, and knowledge of the learning process to be used.
4. Objectives. The board will only approve courses that have a series of stated objectives that are pertinent to the tasks performed by the licensee. The training course content must be consistent with those objectives.
5. Course completion requirements. For successful completion of a training course, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, oral examination, or other similar assessment techniques.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; Errata, 33:15 VA.R. XXXX March 20, 2017.

Part II. Entry

18VAC160-40-40. Fee schedule.

Fee Type	Fee Amount	When Due
Initial application (for each profession, class, and category of license)	\$100	With application
Renewal (for each profession, class, and category of license)	\$80	With renewal application
Reinstatement (for each profession, class, and category of license)	\$105 (renewal fee + \$25 reinstatement fee)	With reinstatement application

For licenses expiring on or after January 31, 2018, and before January 31, 2020, the renewal fee shall be \$50. For reinstatement applications received after January 31, 2018, and on or before January 31, 2020, the total reinstatement fee shall be \$75.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017; amended, Virginia Register Volume 34, Issue 7, eff. January 1, 2018.

Part VIII. Training Course Approval

18VAC160-40-400. Application for training course approval.

A. The board shall consider the following information, to be submitted by the course provider or instructor on forms provided by the board:

1. Course information.
 - a. Course title;

- b. Planned audience;
 - c. Name of provider;
 - d. Name, physical address, email address, and phone number of contact person;
 - e. Scheduled presentation dates;
 - f. Detailed course schedule, hour by hour including begin and end times;
 - g. List of planned breaks;
 - h. Scheduled presentation location; and
 - i. Identification of the profession, category, and class of license to which the course is applicable and relevancy to the identified license type.
2. Instructor qualifications.
 - a. Name of instructor;
 - b. Title;
 - c. Employer;
 - d. Board license number or numbers, if applicable; and
 - e. Summary of qualifications to teach the course.
 3. Training materials.
 - a. Course objectives. A listing of the course objectives stated in terms of the skills and knowledge the participant will be able to demonstrate as a result of the training.
 - b. Course outline. A detailed outline showing the planned activities that will occur during the training course, including major topics, planned presentation sequence, laboratory and field activities, audiovisual presentations, and other major activities.
 - c. Course reference materials. A list of the name, publisher, and publication date for commercially available publications. For reference materials developed by the course provider or available exclusively through the course, a copy of the reference.
 - d. Audiovisual support materials. A listing of any commercially available audiovisual support material that will be used in the program. A brief description of any provider or instructor generated audiovisual material that will be used.
 - e. Handouts. Identification of all commercially available handout materials that will be used, as well as copies of other planned handouts.
 4. Determination of successful completion. A description of the means that will be used to assess the learning of each participant to determine successful completion of training program, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.
- B. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the provider.
1. The board shall consider all of the information listed in subsection A of this section except those items related to specific offerings of the course.
 2. Board approval will apply only to those specific offerings certified by the provider as having been conducted by instructors meeting the established criteria and in accordance with the board-approved course outlines and objectives.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-410. Maintenance of training course approval.

A. At times established by the board, the board may require that course providers that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that the provider continues to comply with the requirements of this chapter. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.

B. Substantial modifications or changes to the information provided in 18VAC160-40-390 and 18VAC160-40-400 must be reported to the board within 30 days of the change. Failure to report the changes as required may result in the withdrawal of approval by the board.

C. Any change of address of the training provider shall be reported in writing within 30 days of the change.

D. The board may conduct an audit of the training provider to ensure continued compliance with this chapter.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-420. Withdrawal of approval.

The board may withdraw approval of any provider for the following reasons:

1. The course or courses being offered no longer meet the standards established by the board.
2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.
3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records.
4. The provider fails to respond to the board or any of its agents.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-430. Training courses offered by certain entities, board approval not required.

A. Training courses provided by (i) federal, state, or local government agencies; (ii) accredited colleges or universities approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; (iii) a regional or national accreditation association; or (iv) an accrediting agency that is recognized by the U.S. Secretary of Education do not require board approval to be used for experience substitution, provided the training course information submitted to the board includes the following:

1. The course must include the continuing education hours awarded by the entity.
2. The course must be related to the profession, category, or class, if applicable, for which experience substitution is sought.

B. The board may require additional information from the provider as necessary to ensure compliance with this section. If such assurance cannot be made by the board, the training course may not be used for experience substitution, or the

provider may pursue board approval pursuant to this chapter.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part IX. Standards of Practice and Conduct**18VAC160-40-440. Grounds for disciplinary action.**

The board may place a licensee on probation; impose a monetary penalty in accordance in § 54.1-202 A of the Code of Virginia; or revoke, suspend, or refuse to renew any license when the licensee has been found to have violated or cooperated with others in violating any provision of the regulations of the board or Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-450. Maintenance of license.

A. No license issued by the board shall be assigned or otherwise transferred.

B. A licensee shall report, in writing, all changes of the address of record and name to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the licensee holds more than one license, the licensee shall inform the board of all licenses, certificates, and registrations affected by the name or address change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's failure to report a change of name or address.

C. Any change in any of the requirements and qualifications for licensure found in Part II (18VAC160-40-20 et seq.), III (18VAC160-40-110 et seq.), or IV (18VAC160-40-170 et seq.) of this chapter shall be reported to the board within 30 days of the change.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-460. Notice of adverse action.

A. Licensees shall notify the board of the following actions against the licensee.

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.

2. Any voluntary surrendering of a related license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession or of any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. Notices to the board must be made in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction finding or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-470. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), or 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, or any of the regulations of the board.
2. Allowing a license issued by the board to be used by another.
3. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining or renewing a license by false or fraudulent representation.
4. A licensee having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-40-460. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia.
5. Failing to inform the board in writing within 30 days that the licensee was convicted or found guilty or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-40-460.
6. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill, and ability in the performance of the licensee's duties.
7. Having undertaken to perform or performed a professional assignment that the licensee is not qualified to perform by education, experience, training, appropriate class or category of licensure, or any combination thereof.
8. Failing to report a change as required by 18VAC160-40-450.
9. Negligence, misconduct, or incompetence in the practice of the profession.
10. Making any misrepresentation or engaging in acts of fraud or deceit in advertising, soliciting, or in providing professional services.
11. Failing to adequately supervise and review work performed by unlicensed employees or journeyman licensees under the direct supervision of the master licensee.
12. Failure to obtain any permit, approval, or other document required by VDH related to the design, installation, repair, or operation of an onsite sewage system.
13. Knowingly signing plans, drawings, reports, specifications, maps, or other documents related to an onsite sewage system not prepared or reviewed and approved by the licensee.
14. Knowingly misrepresenting factual information in expressing a professional opinion.
15. Failing to act in providing professional services in a manner that safeguards the interests of the public.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-480. Conflicts of interest.

The licensee shall:

1. Promptly and fully inform an employer or client of any interest, circumstance, or business association that may influence the licensee's judgment of the quality of service.
2. Not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to by, all interested parties in writing.
3. Neither solicit nor accept financial or other valuable consideration from material or equipment suppliers for specifying their products or services.
4. Not solicit or accept gratuities, directly or indirectly, from contractors or their agents or other parties dealing with a client or employer in connection with work for which the licensee is responsible.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-490. Licensee responsibility.

A. The primary obligation of the licensee is to the public. If the licensee's judgment is overruled and not adhered to when advising appropriate parties of circumstances of a substantial threat to the public health, safety, or welfare, the licensee shall inform the employer and client, as applicable, of the possible consequences and notify appropriate authorities.

B. The licensee shall sign, date, and include his license number on all final work products prepared or reviewed and approved by the licensee. For work products performed by a journeyman licensee, the master licensee providing direct supervision shall sign, date, and include his license number, along with the journeyman's signature, date, and license number on the final work product. A journeyman licensee shall not submit a work project as final without the applicable master licensee's signature, date, and license number.

C. The licensee shall not knowingly associate in a business venture with, or permit the use of the licensee's name by, any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating any law or regulation of the board.

D. A licensee who has direct knowledge that another individual or firm may be violating any of the provisions of this chapter or the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia shall immediately inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

E. Except as provided in subsection F of this section, a licensee shall not utilize the evaluations, design, drawings, or work of another licensee without the knowledge and written consent of the licensee or organization of ownership that originated the design, drawings, or work.

F. A licensee who relies on information in VDH files or has received permission to modify or otherwise utilize the evaluation, design, drawings, or work of another licensee pursuant to subsection E of this section or this subsection may certify that work only after a thorough review of the evaluation, design, drawings or work and after he determines that he is willing to assume full responsibility for all design, drawings, or work on which he relies for his opinion.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry**18VAC160-40-50. Examination fee.**

The fee for examination or reexamination is subject to charges to the department by an outside vendor based on a contract entered into in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part IX. Standards of Practice and Conduct**18VAC160-40-500. Response to inquiry and provision of records.**

A. A licensee must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a licensee of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the licensee was involved, or for which the licensee is required to maintain records. The board may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A licensee shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsection A or B of this section, a licensee must respond to an inquiry by the board or its agent within 21 days.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-510. Master licensee's professional responsibilities.

A. Any work performed by a journeyman regulated pursuant to Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter shall be under the direct supervision of the master. Such master and journeyman shall have an employment or written contractual relationship.

B. Each master shall maintain documentation of the employment or contractual relationship with each journeyman under the master's direct supervision. Such documentation shall be kept for a minimum of five years and shall include, at a minimum, the beginning and ending dates of the employment or contractual relationship.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

Part II. Entry**18VAC160-40-60. General requirements for licensure.**

A. In addition to the specific qualifications for each profession, class, and category of licensure, each applicant for licensure shall meet the requirements provided in this section:

1. The applicant shall be at least 18 years old.

2. The applicant shall disclose his mailing address. A post office box is only acceptable as a mailing address when a physical address is provided.

3. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information:

a. All felony convictions.

b. All misdemeanor convictions that occurred within three years of the date of application.

Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

B. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

C. The applicant shall report any suspension, revocation, or surrender of a license, certification, or registration in connection with a disciplinary action or that has been subject of discipline in any jurisdiction prior to applying for licensure. The board at its discretion may deny licensure to any applicant based on prior suspensions, revocations, or surrenders of licenses based on disciplinary action by any jurisdiction.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-70. Education and training for experience.

A. Each individual applying for a license may receive credit for up to half of the required experience for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, engineering, environmental science, agronomy, earth science, environmental health, or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or

2. Satisfactory completion of board-approved onsite sewage system installer or operator or onsite soil evaluation training courses, as applicable to the license sought, at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercises and field trip contact time. Training credit is not earned for breaks, meals, receptions, and time other than classroom, laboratory, and field trip contact time.

B. Education used to meet the education requirements to qualify for licensure may not be substituted for experience.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-80. Examination procedures and conduct.

A. Upon approval of the application, the board will notify the applicant of his eligibility to take the applicable examination. The license will not be issued prior to the receipt of a passing score for the applicable examination.

B. An applicant who does not receive a passing score within one year after the date of approval of the application by the board to sit for the examination must submit a new application and meet entry requirements in effect at the time of the submittal of the new application.

C. In those instances where the applicant is required to take an examination for licensure, the applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include written instructions

communicated prior to the examination date and instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination shall be grounds for denial of the application, voiding of examination scores, or any combination thereof.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

18VAC160-40-90. Individuals certified or licensed in another jurisdiction.

Any applicant holding a valid license or certificate in another jurisdiction shall meet the requirements of this chapter, including having equivalent experience and education. The applicant shall pass the appropriate board-approved examination to become licensed in those instances where an examination for licensure is required.

Statutory Authority

§§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 33, Issue 11, eff. April 1, 2017.

FORMS (18VAC160-40).

[Conventional Onsite Sewage System Installer License Application, A465-1944CONLIC-v1 \(eff. 4/2017\)](#)

[Alternative Onsite Sewage System Installer License Application, A465-1944ALTLIC-v1 \(eff. 4/2017\)](#)

[Conventional Onsite Sewage System Operator License Application, A465-1942CONLIC-v1 \(eff. 4/2017\)](#)

[Alternative Onsite Sewage System Operator License Application, A465-1942ALTLIC-v2 \(eff. 4/2018\)](#)

[Waiver of Examination - Master Conventional Onsite Sewage System Operator License Application, A436-1942WAIV-v2 \(eff. 4/2017\)](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

[Training Course Approval Application, A465-19CRS-v5 \(eff. 3/2020\)](#)

[Education and Training Substitution Form, A436-19EDTRv4 \(eff. 4/2017\)](#)

[Onsite Sewage System Applicant Experience Verification Application, A436-19OSSPEXP-v4 \(eff. 4/2017\)](#)

Statutory Authority**Historical Notes**

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Agency

Department of Professional and Occupational Regulation

Board

Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals

Chapter

Onsite Sewage System Professionals Licensing Regulations [18 VAC 160 - 40]

[Back to List of Comments](#)

Commenter: SES Mid Atlantic LLC

10/26/20 5:02 pm

DPOR - VDH MOU

I believe there needs to be clarification between VDH and DPOR by policy or reg revision as to the exact requirements for master licensed individuals and supervision requirements of journeymen and laborers onsite completing evaluations, inspecting, operating and installing conventional and alternative onsite sewage systems. If at least a licensed journeyman is required to be onsite at all times for soil evaluation, inspection, installation and all maintenance including tank pump outs of conventional and alternative onsite sewage systems, then this needs to be made clear as well as the availability of the master supervising the journeyman. It appears that the level of supervision intended in the regs is in excess of that required for plumbers, electricians and gas fitters. I believe the level of supervision should be comparable to other trades. When was the last time a septic system killed someone? I also believe that there are many master operators and installers that do not understand these requirements and have unlicensed and or unsupervised workers performing regulated work. I also believe that it is not clear to licensed plumbers that they are not allowed to perform maintenance and replace pumps and floats on septic systems unless they are also licensed as wastewater operators or installers and that conventional operators are not allowed to pump out alternative systems. What electrical work are licensed ww operators and installers allowed to complete and what requires a licensed electrician. It takes a lot of time, training and money to keep properly licensed staff employed and on jobs to meet the intent and letter of the regs and VDH and DPOR have not made this clear to the industry. Other licensed operators should not be the only form of policing competitors and other practitioners. There should also be a mechanism for practitioners who want to become licensed who do not have a master licensee to work under to become licensed instead of just trying to operate under the radar. VDH and DPOR must work together to rid the commonwealth of unlicensed practitioners who have no desire to become licensed and compete fairly with those of us who play by the rules. Master plumbers and master electricians are allowed to self certify some things in some counties but not master septic system installers? Now lets talk about all the competition from unlicensed practitioners including homeowners. Why cant a homeowner replace his own pump, compressor or float if he has it inspected? There need to be some reasonable provisions for this. End of rant one, there will be more. Mike Lynn

CommentID: 87387

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

Summary of Comments for Periodic Review of Onsite Sewage System Professionals Licensing Regulations

Following is the summary of comments received during the public comment period (October 26, 2020, to November 16, 2020) regarding the Board’s periodic review of the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40). The comments below represent comments received on the regulation. During the public comment period, the Board received comments from one commenter.

	Regulation *#	Summary of Comment(s)	Draft Board Response
	Commenter		
1	160-40 Mike Lynn – SES Mid-Atlantic LLC	<p>Commenter requests there be clarification between VDH and DPOR as to the requirements for master licensees regarding supervision of journeyman licensees and laborers who are onsite performing evaluations, inspections, operation, and installation of onsite sewage systems. Many master licensees do not understand current requirements and have unlicensed or unsupervised workers performing regulated work.</p> <p>The level of supervision required in the regulations exceeds that required for plumbers, electricians, and gas fitters. The level of supervision for onsite sewage professionals should be comparable to other trades.</p>	<p>The Board thanks the commenter.</p> <p>The Board’s authority to develop licensing requirements does not expand to the processes employed by the Virginia Department of Health (VDH). The regulations provide the definition of direct supervision (160-40-10) and the master licensee’s responsibilities (160-40-510). In addition, the Board adopted guidance in April of 2017 that further clarified the responsibilities of journeyman and master licensees in the provision of regulated work. If master licensees have unlicensed individuals or unsupervised journeyman performing regulated work, then that could be cause for disciplinary action by the Board. If master licensees do not understand the regulatory requirements for their licenses, that is an education and compliance issue, not necessarily an issue that necessitates amendment of the regulations.</p>

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			<p>Regarding the differences between the supervision requirements for tradesman licensees under the Board for Contractors and journeyman licensees under the WWOOSSP Board, it should be noted that the entry requirements for journeyman tradesman exceed those of journeyman licensees under the WWOOSSP Board. Journeyman tradesman licensees are required, in most cases, to take an examination, have up to 240 hours of training, and four years of experience. Journeyman applicants under the WWOOSSP Board can qualify for licensure with no examination and as few as six months of experience.</p> <p>During its initial development of the regulation, the Board considered the supervision requirements appropriate to fulfill its statutory obligation to protect the public health and welfare, while doing so in the least burdensome and most cost efficient manner.</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>
2	160-40	<p>The commenter states that it is not clear to licensed plumbers that plumbers are not allowed to perform maintenance and replace pumps and floats on septic systems without a wastewater operator or installer license. It is not clear that conventional operators are not allowed pump out alternative systems. It is not clear what electrical work may</p>	<p>The Board thanks the commenter.</p> <p>Chapter 23 of Title 54.1 provides the licensing authority for those engaging in regulated work as onsite sewage system professionals. If individuals who are not licensed as the appropriate onsite sewage system professionals license type to engage in regulated services are engaging</p>

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		<p>be performed by operators and installers, and what must be performed by a licensed electrician.</p> <p>Commenter noted that it takes a lot of time, training, and money to keep properly licensed staff employed and on jobs to meet the requirements of the regulations, and VDH and DPOR have not made this clear to the industry. Other licensed operators should not be the only form of policing competitors and other practitioners.</p>	<p>in such services, that is a compliance issue and/or an area for increased education for those other license types.</p> <p>The Board adopted guidance in April 2017 with the limited circumstance in which a conventional operator can pump an alternative system. Otherwise, the definitions (160-40-10) provide that conventional operators are licensed to operate and maintain <i>conventional</i> onsite sewage systems whereas alternative operators are licensed to operate and maintain <i>conventional and alternative</i> onsite sewage systems.</p> <p>The Board’s regulatory authority extends only to those who are onsite sewage system installers, operators, and soil evaluators.</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>
3	160-40		The Board thanks the commenter.

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		<p>Commenter suggests there should be a process for practitioners who do not have a master licensee to work under to become licensed instead of “operating under the radar.”</p> <p>DPOR and VDH must work together to rid the Commonwealth of unlicensed practitioners who have no desire to become licensed and compete fairly with those who play by the rules.</p>	<p>One of the requirements to qualify for licensure for any professional regulatory program is experience. In order to gain such qualifying experience, an individual must work under the direction of a licensed professional in order to become minimally competent to engage in the profession. To accomplish this, some employers and other entities establish apprenticeship programs to aide unlicensed individuals in obtaining the necessary experience and training to become licensed and the Board’s regulations do not prohibit gaining experience through such programs. The establishment and development of an apprenticeship program is administered by the Department of Labor and Industry should an entity wish to pursue this as an option to help train up-and-coming professionals.</p> <p>While the Board agrees that unlicensed individuals are prohibited by law from engaging in activities requiring a license, such activities do not fall under the jurisdiction of the Board as they are criminal violations and must be adjudicated through the criminal prosecution process.</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>
4	160-40	<p>Commenter states master plumbers and master electricians are allowed to self-certify some things in some counties, but master septic system installers are not.</p>	<p>The Board thanks the commenter.</p> <p>The Board does not have authority over the permitting or certification processes exercised by localities.</p>

DRAFT CONTINGENT ON BOARD REVIEW AND APPROVAL

5	160-40	<p>Commenter states homeowners should be permitted to perform work on their own septic systems such as replacing pumps, compressors, or floats without a license as long as the work is inspected.</p>	<p>The Board thanks the commenter.</p>
			<p>The Board does not have the authority to make the change the commenter seeks. The licensure requirement was established by the General Assembly and does not include an exemption for homeowners performing regulated work on their own onsite sewage systems. Only the General Assembly can amend the statute to create such an exemption.</p>

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**Board for WWOSSP
Analysis of Fee Structure and Financial Position**

Callahan Percentage Previous Biennium 32.9%

Date of Last Fee Increase: 12/1/2004
Date of Last Fee Decrease: 2/15/2001
Onsite Professionals began: 7/1/2009

Fee Structure

<u>Fee Type</u>	<u>Current Fees</u>	<u>Proposal A</u>	<u>Proposal B</u>	<u>Proposal C</u>
Application Waterworks Operators	100	100	115	85
Upgrade App Waterworks Operators	100	100	115	85
Application Waste Water Operators	100	100	115	85
Upgrade App Waste Water Operators	100	100	115	85
Application Onsite Soil Evaluator	100	100	115	85
Application Onsite Sewage System Operator	100	100	115	85
Application Onsite Sewage System Installer	100	100	115	85
Upgrade App Onsite Sewage System Operator	100	100	115	85
Renewal Waterworks Operators	80	100	95	105
Renewal Onsite Soil Evaluator	80	100	95	105
Renewal Onsite Sewage System Operator	80	100	95	105
Renewal Onsite Sewage System Installer	80	100	95	105
Renewal Waste Water Operators	80	100	95	105
Reinstatement All	25	35	35	35
Certification of Licensure All	35	35	35	35
Bad Checks All	50	50	50	50
Duplicate Certificate All	35	35	35	35

Financial Position

	<u>Actual 2018-20 Biennium</u>	<u>Projected 2020-22 Current Fees</u>	<u>Projected 2022-24 Current Fees</u>	<u>Projected 2022-24 Proposal A</u>	<u>Projected 2022-24 Proposal B</u>	<u>Projected 2022-24 Proposal C</u>
Cash Carryforward	332,426	191,147	99,797	99,797	99,797	99,797
Revenues	439,616	523,509	534,556	629,085	629,412	628,758
Expenditures	580,895	614,859	620,444	620,444	620,444	620,444
Balance	191,147	99,797	13,909	108,438	108,765	108,111
Projected Callahan Percentage Close of Biennium			2.2%	17.5%	17.5%	17.4%

NOTES:

Proposal A sets fees for both application and renewal to be equal, only raising renewal fees to the current application fees
Proposal B sets fees for applications to be higher than renewal fees
Proposal C sets fees for renewal to be higher than application fees, which are actually a decrease from current fees
All proposals achieve the same goal of increasing revenue to be sufficient to cover expenses

2020 Onsite Sewage System Professionals CPE Audit Report

Memo

To: WWWWOOSP Board Members
From: Tanya M. Pettus, Administrative Assistant
Date: 01/14/2021
Re: 2020 Onsite Sewage System Professionals CPE Audit Report

This memo provides information regarding the 2020 Onsite Sewage System Professionals CPE Audit Report.

October 7, 2020: The regulant population of onsite sewage system professionals eligible for audit totaled 603 in Eagles. As previously directed by the Board, five percent (5%) of the eligible regulant population was randomly selected, resulting in 31 regulants selected for audit. Note: Regulants licensed less than two years were manually excluded.

October 7, 2020: Initial letter and CPE audit form mailed to regulants selected for audit.

November 6, 2020: Due date of CPE audit form and required documentation.

November 9, 2020: Final notices mailed via UPS to 9 licensees who did not respond to the audit.

November 20, 2020: Final due date of CPE audit form and required documentation.

Update: Responses received as of close of business December 8, 2020:

Total Received	29
Passed	29
Incomplete	0
Pending Review	0
Referred for Disciplinary Action	2
Surrendered	0
No Response	2

EXAMINATION UPDATES

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PFA Summary

1/1/2017 through 1/3/2021

Delivery Method: ALL

Client: Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals(ABC-VA)

Test Program: Virginia Wastewater Works Operator Class 1 Examination - VAWW1

Exam Type: Virginia Wastewater Works Operator Class 1 Examination - CLASS1

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	191	32	16.8%	159	83.2%	5	2.6%	196
Repeater	301	62	20.6%	239	79.4%	9	2.9%	310
Total	492	94	19.1%	398	80.9%	14	2.8%	506

Test Program: Virginia Wastewater Works Operator Class 2 Examination - VAWW2

Exam Type: Virginia Wastewater Works Operator Class 2 Examination - CLASS2

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	292	83	28.4%	209	71.6%	5	1.7%	297
Repeater	307	70	22.8%	237	77.2%	15	4.7%	322
Total	599	153	25.5%	446	74.5%	20	3.2%	619

Test Program: Virginia Wastewater Works Operator Class 3 Examination - VAWW3

Exam Type: Virginia Wastewater Works Operator Class 3 Examination - CLASS3

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	303	97	32.0%	206	68.0%	8	2.6%	311
Repeater	325	95	29.2%	230	70.8%	5	1.5%	330
Total	628	192	30.6%	436	69.4%	13	2.0%	641

Test Program: Virginia Wastewater Works Operator Class 4 Examination - VAWW4

Exam Type: Virginia Wastewater Works Operator Class 4 Examination - CLASS4

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	337	104	30.9%	233	69.1%	8	2.3%	345
Repeater	421	102	24.2%	319	75.8%	9	2.1%	430
Total	758	206	27.2%	552	72.8%	17	2.2%	775

PFA Summary

1/1/2017 through 1/3/2021

Delivery Method: ALL

Client: Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals(ABC-VA)

Test Program: Virginia Waterworks Operator Class 1 Examination - VAWA1

Exam Type: Virginia Waterworks Operator Class 1 Examination - CLASS1

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	151	35	23.2%	116	76.8%	1	0.7%	152
Repeater	237	49	20.7%	188	79.3%	10	4.0%	247
Total	388	84	21.6%	304	78.4%	11	2.8%	399

Test Program: Virginia Waterworks Operator Class 2 Examination - VAWA2

Exam Type: Virginia Waterworks Operator Class 2 Examination - CLASS2

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	195	96	49.2%	99	50.8%	5	2.5%	200
Repeater	233	53	22.7%	180	77.3%	9	3.7%	242
Total	428	149	34.8%	279	65.2%	14	3.2%	442

Test Program: Virginia Waterworks Operator Class 3 Examination - VAWA3

Exam Type: Virginia Waterworks Operator Class 3 Examination - CLASS3

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	230	127	55.2%	103	44.8%	10	4.2%	240
Repeater	180	65	36.1%	115	63.9%	5	2.7%	185
Total	410	192	46.8%	218	53.2%	15	3.5%	425

Test Program: Virginia Waterworks Operator Class 4 Examination - VAWA4

Exam Type: Virginia Waterworks Operator Class 4 Examination - CLASS4

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	211	137	64.9%	74	35.1%	7	3.2%	218
Repeater	100	36	36.0%	64	64.0%	2	2.0%	102
Total	311	173	55.6%	138	44.4%	9	2.8%	320

PFA Summary

1/1/2017 through 1/3/2021

Delivery Method: ALL

Client: Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals(ABC-VA)

Test Program: Virginia Waterworks Operator Class 5 Examination - VAWA5

Exam Type: Virginia Waterworks Operator Class 5 Examination - CLASS5

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	75	65	86.7%	10	13.3%	2	2.6%	77
Repeater	14	4	28.6%	10	71.4%	0	0.0%	14
Total	89	69	77.5%	20	22.5%	2	2.2%	91

Test Program: Virginia Waterworks Operator Class 6 Examination - VAWA6

Exam Type: Virginia Waterworks Operator Class 6 Examination - CLASS6

	Total Tested	Pass	%	Fail	%	Absent	%	Total
First Time	44	27	61.4%	17	38.6%	0	0.0%	44
Repeater	21	11	52.4%	10	47.6%	2	8.7%	23
Total	65	38	58.5%	27	41.5%	2	3.0%	67

VA ONSITE SEWAGE SYSTEM PROFESSIONALS (OSSP)

STATISTICAL OVERALL SUMMARIES

JANUARY 1, 2017 TO DECEMBER 31, 2020

AND

July 1, 2018 TO DECEMBER 31, 2020

JANUARY 1, 2017 TO DECEMBER 31, 2020

Alternative	Took	Pass	Pass Percentage
System Installer	149	47	31.54%
System Operator	37	32	86.48%
Soil Evaluator	41	40	97.56%
Overall	227	119	52.42%

Conventional	Took	Pass	Pass Percentage
System Installer	70	28	40.00%
System Operator	28	16	57.14%
Soil Evaluator	44	38	86.36%
Overall	142	82	57.74%

JULY 1, 2018 TO DECEMBER 31, 2020

Alternative	Took	Pass	Pass Percentage
System Installer	90	33	36.66%
System Operator	37	20	54.05%
Soil Evaluator	28	27	96.42%
Overall	155	80	51.61%

Conventional	Took	Pass	Pass Percentage
System Installer	52	22	42.30%
System Operator	12	09	75.00%
Soil Evaluator	31	24	77.41%
Overall	95	55	57.89%

1/11/2021

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DPOR UPDATES AS IT RELATES TO COVID-19 RESPONSE

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**Department of Professional and Occupational Regulation
Statement of Financial Activity**

**Board for WWOOSSP
954530**

2020-2022 Biennium

November 2020

	November 2020 Activity	Biennium-to-Date Comparison	
		July 2018 - November 2018	July 2020 - November 2020
Cash/Revenue Balance Brought Forward			15,919
Revenues	8,890	44,740	53,846
Cumulative Revenues			69,765
Cost Categories:			
Board Expenditures	2,699	8,000	7,495
Board Administration	6,741	39,999	37,517
Administration of Exams	1,214	8,541	6,630
Enforcement	418	2,298	2,361
Legal Services	0	530	446
Information Systems	4,325	26,270	22,135
Facilities and Support Services	3,611	14,009	18,512
Agency Administration	3,021	18,263	17,137
Other / Transfers	0	0	0
Total Expenses	22,029	117,909	112,234
Transfer To/(From) Cash Reserves	(13,139)	0	(42,469)
Ending Cash/Revenue Balance			0

Cash Reserve Beginning Balance	145,898	0	175,229
Change in Cash Reserve	(13,139)	0	(42,469)
Cash Reserve Ending Balance	132,759	0	132,759

Number of Regulants

Current Month	5,905
Previous Biennium-to-Date	5,854

UPDATE ON OUTREACH OPPORTUNITIES

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Board for Professional and Occupational Regulation

December 17, 2020

FINAL REPORT TO THE GENERAL ASSEMBLY

Evaluation of the Need for Continued Regulation of
Certain Professions and Occupations as Recommended by
the Joint Legislative Audit and Review Commission



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Summary

The Joint Legislative Audit and Review Commission (JLARC) recommended that the Board for Professional and Occupational Regulation (BPOR) review the need for continued regulation of certain professions and occupations. The purpose of this report is to:

1. Determine the appropriate level of regulation, if any, for currently licensed soil scientists, waste management facility operators, and landscape architects, and
2. Evaluate potential impacts of deregulation on currently certified common interest community manager employees, interior designers, backflow prevention device workers, and wetland delineators.

After assessing those programs against the statutory criteria enumerated in § 54.1-311 of the Code of Virginia to inform its analysis, BPOR offers the following findings and recommendations.

Key Findings + Recommendations

Assessment of the need for continued regulation

Soil Scientists

- Certification of soil scientists, rather than licensing, appears to be the least-restrictive degree of regulation necessary to protect the public.
- The General Assembly may wish to consider reverting to the system of voluntary certification (title protection) that existed prior to 2013.
- If deregulated, national certification could serve as a substitute for state regulation.

Waste Management Facility Operators

- State occupational regulation of waste management facility operators is not warranted.
- The General Assembly may wish to consider eliminating the licensing program, and rely instead on existing facility oversight by the Virginia Department of Environmental Quality.
- If deregulated, national certifications could serve as a substitute for state regulation.

Landscape Architects

- Licensure of landscape architects appears justified as the least-restrictive degree of regulation necessary to protect the public.
- If landscape architects are deregulated, there is no substitute for state regulation.
- To address JLARC's concerns about risk from unregulated occupations performing similar work under the existing regulatory framework, the General Assembly may wish to consider reserving aspects of the scope of practice only to licensed professionals.

Assessment of potential impact of de-certification

Common Interest Community Manager Employees

- State occupational regulation of CIC manager employees is not warranted.
- The General Assembly may wish to consider eliminating the certification program; national certifications could serve as a substitute for state regulation.
- If deregulated, current certificate holders would be relieved of the obligation to pay a \$75 fee every two years to renew their state credential.

- Compliance costs associated with national certifications include annual fees ranging from \$85-\$385 and completion of up to 16 hours of continuing education as a condition of renewal.

Interior Designers

- State certification of interior designers appears justified as the least-restrictive degree of regulation necessary to protect the public.
- National certification is not an equivalent substitute for state regulation and may not offer the same public protection.
- If deregulated, current certified interior designers would be relieved of the obligation to pay a \$45 fee every two years to renew their state credential.
- Deregulation may result in significant economic disruption for current certificate holders by jeopardizing their practice rights and entrepreneurship opportunities.

Backflow Prevention Device Workers

- State certification of backflow prevention device workers appears warranted as the least-restrictive degree of regulation necessary to protect the public.
- Relying on national or local certifications as alternatives to state regulation is likely to increase compliance burdens on current certificate holders, particularly for those who work in more than one locality.
- If deregulated, current certified backflow prevention device workers would be relieved of the obligation to complete eight hours of continuing education and pay a \$50 fee every two years to renew their state credential.
- Deregulation conflicts with impending Virginia Department of Health regulatory action that would mandate anyone who tests and repairs backflow prevention assemblies and devices be a DPOR-certified backflow prevention device worker.

Wetland Delineators

- State certification of wetland delineators appears justified as the least-restrictive degree of regulation necessary to protect the public.
- National certification is not an equivalent substitute for state regulation and may not offer the same public protection.
- If deregulated, current certified professional wetland delineators would be relieved of the obligation to pay a \$70 fee every two years to renew their state credential.
- Compliance costs associated with national certification include a \$75 annual fee, as well as a \$100 renewal fee and completion of continuing education every five years.

Overview

In its 2018 report, [*Operations and Performance of the Department of Professional and Occupational Regulation*](#), JLARC found the vast majority of occupations assigned to the agency met Virginia's statutory criteria to warrant regulation. In Chapter 2 of its report, JLARC noted:

The General Assembly decides which occupations are regulated by the Department of Professional and Occupational Regulation (DPOR). The decision to regulate an occupation should consider two priorities: the need to protect the public and the need to avoid placing unnecessary restrictions on individuals and businesses entering the workforce.

However, JLARC's analysis determined several DPOR-regulated occupations either explicitly do not satisfy the criteria for regulation, or the current level of regulation is unnecessary because the public is otherwise sufficiently protected. For example, report recommendations 1 and 4 suggested the General Assembly take legislative action to eliminate regulation of natural gas automobile mechanics and technicians, common interest community managers; opticians; and residential building energy analysts and firms.¹

Additionally, JLARC cited the statutory authority granted to the Board for Professional and Occupational Regulation (BPOR) to evaluate whether currently unregulated occupations should be regulated, noting that in the past the General Assembly often directed BPOR to review proposed and existing regulatory programs using the guidelines enumerated in § 54.1-311.

“Greater use of this evaluation process would help ensure the General Assembly is able to make fully informed decisions about which occupations should be regulated,” according to JLARC.

Purpose

JLARC recommended BPOR review the need for continued regulation of the following occupations, in accordance with the statutory evaluation process:

- Virginia licensed professional soil scientists
- Waste management facility operators
- Landscape architects
- Common interest community manager principal/supervisory employees
- Certified interior designers
- Backflow prevention device workers
- Virginia certified professional wetland delineators

The purpose of this report is to determine the appropriate level of regulation, if any, for soil scientists, waste management facility operators, and landscape architects; and to evaluate potential impacts of deregulation on currently certified common interest community manager employees, interior designers, backflow prevention device workers, and wetland delineators.

¹ Chapter 1168 of the 2020 Acts of Assembly deregulated natural gas automobile mechanics and technicians. Legislation introduced during the 2019 Session of the General Assembly to deregulate CIC managers, opticians, and residential building energy analysts and firms failed to pass (HB 2099).

Methodology

BPOR developed study guidelines to document best practices and procedures used in prior evaluations. The guidance document is publicly available on the Virginia Regulatory Town Hall to inform interested parties of BPOR's statutory authority and its approach toward conducting studies.² In addition to data collection and analysis, the evaluation process solicits and encourages meaningful public participation from the public as well as regulated communities.

For this study, to complement its research and document review, staff interviewed practitioners, program administrators, representatives of professional associations, and other stakeholders. After issuing an interim report in December 2019,³ BPOR scheduled public hearings to solicit comment as follows:

March 20, 2020	Richmond
March 23, 2020	Harrisonburg
April 17, 2020	Abingdon
May 21, 2020	Chesapeake
May 27, 2020	Fairfax

Unfortunately, the COVID-19 public health emergency required cancelation of all in-person public hearings. Given the uncertainty surrounding when public hearings might be rescheduled safely, and in order to provide interested parties sufficient opportunity to provide comment, BPOR opened a public comment forum on the Virginia Regulatory Town Hall from September 1 – 30, 2020.

BPOR received 980 comments in total via the online forum, all of which are available for review at: <https://townhall.virginia.gov/L/ViewNotice.cfm?GNid=1150>. In addition, 15 individuals offered public comment during the board's December 17, 2020, meeting, where the board voted unanimously to adopt this final report for presentation to the General Assembly.⁴

Degrees of Regulation

Pursuant to § 54.1-311, if BPOR recommends a particular profession or occupation be regulated—or suggests a different level of regulation should be imposed on an already regulated profession or occupation—it shall consider the following degrees of regulation in order:

1. Private civil actions and criminal prosecutions

Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide stricter causes for civil action and criminal prosecution.

2. Inspection and injunction

Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may recommend more adequate inspection procedures and to specify procedures whereby the

² See <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6036>

³ See <https://rga.lis.virginia.gov/Published/2019/RD695>

⁴ Other than relevant information regarding the national interior design certification program, which BPOR voted to incorporate into its final report, no new pertinent data was presented during public comment at the December 17, 2020, meeting.

appropriate regulatory entity may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant the appropriate state agency the power to provide sufficient inspection and injunction procedures.

3. Registration

Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may recommend a system of registration.

4. Certification

When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may recommend a system of certification.

5. Licensing

Whenever adequate regulation cannot be achieved by means other than licensing, the Board may recommend licensing procedures for any particular profession or occupation.

Criteria

In determining the proper degree of regulation, if any, BPOR shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.
2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.
3. The number of states which have regulatory provisions similar to those proposed.
4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.
5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.
6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.
7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.
8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Alternatives to Regulation

In cases where BPOR identifies a potential risk from an unregulated profession or occupation, but other criteria are insufficient to substantiate a regulatory program of registration, certification, or licensure, it may make other recommendations.

In accordance with statute and Criteria 6 and 7, BPOR must consider less restrictive means to protect the public's health, safety, and welfare, rather than interfering in the occupational property rights of individuals.

Evaluation Matrix

If an evaluation indicates that a regulatory program is warranted, BPOR assesses the criteria against the degrees of regulation, from least restrictive (registration) to most restrictive (licensure).

The following matrix outlines the characteristics of registration, certification, and licensure, and summarizes criteria applicable to each category.

	REGISTRATION	CERTIFICATION	LICENSURE
	<i>Requires only the filing of name, location, and occasionally additional information. Minimum competency standards are not typically required for a registry.</i>	<i>Voluntary; also known as "title protection." No scope of practice reserved to a particular group. However, only those individuals who meet minimum competency standards may use or call themselves by the protected title.</i>	<i>Mandatory; most restrictive level of occupational regulation. Statutory scope of practice reserved to select group based on unique, identifiable, minimum competencies for public protection.</i>
Risk	Low potential, but consumers need to know that redress is possible.	Moderate potential, attributable to the nature of the practice, consumer vulnerability, or practice setting and level of supervision.	High potential, attributable to the nature of the practice.
Skill + Training	Variable, but can be differentiated from ordinary work and labor.	Specialized; can be differentiated from ordinary work. Candidate must complete specific education or experience requirements.	Highly specialized education required.
Autonomy	Variable.	Variable; some independent decision-making; majority of practice actions directed or supervised by others.	Practices independently with a high degree of autonomy; little or no direct supervision.
Scope of Practice	N/A	Definable in enforceable legal terms; not reserved.	Definable in enforceable legal terms; reserved.
Applicable Criteria	Criteria 4, 5 and 6 must be met.	Criteria 1 through 6 must be met.	Criteria 1 through 6 must be met.

Assessment of the need for continued regulation

In its 2018 report, JLARC found several mandatory licensure programs previously established by the General Assembly “do not substantially meet the criteria Virginia has set for regulation,” including those restricting access to practice as a soil scientist, waste management facility operator, and landscape architect (see Table 2-2 from JLARC report below).

TABLE 2-2
Some licensed occupations do not substantially meet criteria for regulation

	Unregulated practice can harm public	Work is distinguishable from others	Public benefits from state assurance	Public is not protected by other means
Community managers 185 regulants	○	◐	◐	◐
Opticians 1,895 regulants	○	◐	◐	◐
Residential energy analysts & firms 127 regulants	○	●	◐	◐
Soil scientists 102 regulants	◐	●	◐	○
Waste mgmt. facility operators 670 regulants	◐	●	○	◐
Landscape architects 925 regulants	◐	◐	◐	◐

KEY ●=meets criteria ◐=partially meets criteria ○=does not meet criteria

Noting the statutory proscription in § 54.1-100 against occupational regulation unless necessary for public protection, JLARC’s analysis concluded:

Three occupations pose some risk of harm, but regulation is not needed because the public is protected by other means so the risk is low (soil scientist); or regulation provides little added benefit (waste management facility operators); or regulation does not fully address the risk because much of the same work can be performed by unregulated occupations (landscape architects).

Although these three occupations “pose some potential for public harm if left unregulated,” because the risks appear minimal, **JLARC recommended BPOR determine what level of regulation is warranted, if any.**

Soil Scientists

According to JLARC's analysis, regulation of soil scientists is unnecessary due to a low risk of public harm; although incompetent practice could negatively impact land use or land management, the report suggests potential harm is remote because many other regulated professionals are involved in such processes. Moreover, JLARC noted an existing private national certification is available to verify qualifications for soil scientists as an alternative to state regulation.

Virginia-licensed professional soil scientists are defined in § 54.1-2200 as "a person who possesses the qualifications required for licensure by the provisions of this chapter and the regulations of the Board and who has been granted a license by the Board." The practice of soil evaluation, as defined below, is restricted to licensed soil scientists⁵:

" . . . the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings."

Initially, the legislature established the regulatory program governing soil scientists as a voluntary certification in 1989. During the 2011 Session of the General Assembly, the level of regulation increased to licensure with an effective date of July 1, 2013.

The Board for Soil Scientists, Wetland Professionals, and Geologists administers and enforces the regulatory program for soil scientists. As of December 1, 2020, Virginia regulated 89 licensed professional soil scientists,⁶ composing 7.5% of that board's total regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of soil science presents a moderate risk of public harm. Hazards are mitigated by the involvement of other regulated professionals, government and academic employers, and permitting authorities to protect against ineffective land use or land management problems.

Examples of potential harm from incompetent practice include detrimental repair costs to homeowners; contaminated water and dead vegetation; failure to identify suitable soils for their capacity of taking on and treating septic effluent; and inability to protect onsite and offsite environmental resources from erosion.

For instance, according to commenters, erosion and sediment control problems with the Mountain Valley Pipeline project may have resulted from a failure to conduct a proper soil survey by a licensed professional soil scientist. However, erosion and mudslide issues may also be attributed to the steep landscape, rather than a flawed soil survey.

⁵ Subsection B.2 of § 54.1-2201 allows licensed professional engineers, landscape architects, and land surveyors to render soil evaluation services as part of their work.

⁶ In February 2011, when the General Assembly considered increasing the degree of regulation, Virginia regulated 136 certified soil scientists.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment overwhelmingly supported continued licensure of soil scientists. Of 84 total comments received regarding soil scientists, 31% self-identified as non-practitioners.

The two commenters in opposition, one of whom self-identified as a licensee, cited among other reasons the size of the regulant population as being too small to warrant continued government regulation.

Total Comments in Support of Continued Regulation	82 (98%)
Total Comments Opposed to Continued Regulation	2 (2%)

Comments from Non-Practitioners in Support of Continued Regulation	26
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

All 50 states regulate soil scientists to some degree. Virginia and eight other jurisdictions currently license soil scientists, and 41 states administer voluntary certification programs.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

Builders, homeowners, farmers, real estate professionals, and governmental entities are among the population that engages soil scientists for a variety of public and private land development purposes such as erosion control, environmental impact studies, storm water and sludge management, mine reclamation, site restoration, ecological evaluations, waste application, nutrient management services, and suitability studies for moisture retention or drainage.

The Soil Science Society of America (SSSA) offers national certification that could serve as an alternative to state regulation; in fact, the exams for the national Certified Professional Soil Scientist designation are the same ones used to qualify for Virginia’s existing soil scientist license. Additionally, licensed professional engineers, landscape architects, and land surveyors are authorized to engage in the practice of soil evaluation pursuant to subsection B.2 of § 54.1-2201.

If the profession is deregulated, nationally credentialed substitutes may be available to meet demand. However, according to public comment, in at least one instance a locality would only accept work performed by a licensed soil scientist. (Acceptance of work by regulated substitutes could be addressed through guidance or clarifying legislation if necessary.)

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Licensed professional soil scientists must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 145-20-160 et seq.).

SSSA requires adherence to its published [Code of Ethics](#) as a condition of national certification.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

Soil science is a specialized field and it is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency. Prospective employers of soil scientists to work in government or academic settings, however, likely have the ability to verify their competency.

A system of certification appears to be least restrictive level of regulation to provide the public with a substantial basis for relying on the services of soil scientists.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

SSSA requires adherence to its published Code of Ethics, which includes mandatory reporting by nationally certified individuals of certificate holders who have deviated from professional standards. In addition, SSSA-certified individuals must complete at least 30 continuing education units every two years as a condition of renewal.

The professional association also investigates complaints of potential violations and may impose sanctions including suspension or revocation of certification.⁷

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against licensed soil scientists resulting in disciplinary action. That data may indicate the existing regulatory system of licensure is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The involvement of other regulated professionals, government and academic employers, and permitting authorities in the process associated with soil science practice may be adequate to mitigate risks to public health, safety, and welfare.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Although soil science is a specialized field, the risk of incompetent practice is mitigated by the involvement of other regulated professionals, government and academic employers, and permitting authorities in the process.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Public- and private-sector entities often hire soil scientists to work on major land use or infrastructure projects, such as the construction and installation of oil and gas pipelines, which exposes the public to

⁷ <https://www.soils.org/files/certifications/cpsc-cpss/2015-sssa-cpss-cpsc-complaint-investigation-procedures.pdf>

financial, environmental, and health hazards. However, the risk of incompetent practice is mitigated by the involvement of other regulated professionals, government and academic employers, and permitting authorities in the process.

Assessment

Certification appears to be the most appropriate, least-restrictive level of regulation for soil scientists.

RISK	Moderate potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; often collaborating with other regulated professionals; oversight of practice actions by permitting authorities.
SCOPE OF PRACTICE	Definable in enforceable legal terms; other licensed professionals allowed to practice under exemption.

The General Assembly may wish to consider reverting to the voluntary state certification (title protection) that existed prior to 2013, or relying entirely on the national Certified Professional Soil Scientist designation as an alternative to state regulation.

Waste Management Facility Operators

JLARC found little added benefit associated with the licensing requirement for individuals who manage the daily operations of solid waste facilities; its report suggested public risks are adequately addressed by regulation of such facilities (e.g., landfills and transfer stations) by the Virginia Department of Environmental Quality (DEQ). Additionally, JLARC noted the Board for Waste Management Facility Operators rarely meets due to a lack of business and that existing national certifications are available to verify qualifications for operators as an alternative to state regulation.

Waste management facility operators are defined in § 54.1-2209 as “any person, including an owner, who is in charge of the actual, on-site operation of a waste management facility during any period of operation.” Four distinct license classes are available depending on an individual’s demonstrated competency level. A waste management facility is defined by statute as “a site used for planned treatment, storage or disposal of nonhazardous solid waste.”

The General Assembly created the Board for Waste Management Facility Operators in 1991 and provided a two-year delayed effective date for the licensing requirement. The Board administers and enforces the regulatory program; establishes training criteria and approves training providers; and licenses qualified individuals.

As of December 1, 2020, Virginia licensed 647 waste management facility operators (100% of that board’s regulant population.)

Application of Criteria

- 1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.**

Waste management facility operators do not perform services for individuals and present low risk to the public if unregulated.

Potential hazards to public health, safety, or welfare from incompetent practice—including groundwater contamination, improper venting of landfill gases, or vermin infestation—are mitigated by strict oversight of the facilities by DEQ, the primary state agency responsible for protecting human health and the environment in this field.

- 2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.**

Public comment received regarding waste management facility operators was unanimously supportive. All four commenters self-identified as non-practitioners.

Total Comments in Support of Continued Regulation	4 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)

Comments from Non-Practitioners in Support of Continued Regulation	4
Comments from Non-Practitioners Opposed to Continued Regulation	0

- 3. The number of states which have regulatory provisions similar to those proposed.**

According to JLARC, 22 other states also regulate waste management facility operators, although some jurisdictions require operators to hold a national certification.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires waste management operator services. Waste management facilities are DEQ-regulated sites used for the planned treatment, storage, or disposal of non-hazardous solid waste.

If the profession is deregulated, substitutes appear available to meet demand. Alternatives to state regulation include the Solid Waste Association of North America (SWANA) Manager of Landfill Operations certification and the National Waste & Recycling Association (NWRA) Certified Landfill Manager certification.

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Licensed waste management facility operators must comply with standards of practice and conduct enumerated in board regulations (18 VAC 155-20-285).

Additionally, DEQ indirectly regulates the standards of public responsibility necessary to protect environmental and human health at waste management facilities.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

Waste management facility operators do not provide direct services to consumers or the public, who likely would not be able to select a qualified practitioner without assurance of minimum competency. However, operators are employed by DEQ-regulated facilities whose owners can reasonably be expected to have the ability to verify competency.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

SWANA requires certified Managers of Landfill Operations to complete 30 continuing education units every three years as a condition of renewal.

In addition, JLARC noted that potential risks presented by incompetent, unscrupulous, or irresponsible operators are adequately addressed by DEQ as the primary state agency responsible for protecting human health and the environment in this field.

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against licensed waste management facility operators resulting in disciplinary action. That data may indicate the existing regulatory system of licensure is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The current statutory and regulatory framework of DEQ oversight of waste management facilities appears adequate to protect public health, safety, and welfare.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Although waste management facility operation is a specialized field, strict regulation of waste management facilities by DEQ mitigates the relatively low risk of incompetent practice by operators.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Although waste management facility operators do not provide direct services to consumers, their work can expose the public to environmental and health hazards. However, the risk of incompetent practice by operators is low and mitigated by strict regulation of waste management facilities by DEQ.

Assessment

No level of occupational regulation appears warranted for waste management facility operators.

RISK	Low potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; majority of practice actions supervised by DEQ.
SCOPE OF PRACTICE	Definable in enforceable legal terms.

The General Assembly may wish to consider eliminating the licensing requirement and rely instead on existing DEQ oversight of waste management facilities. DEQ could require operators to obtain and maintain private-sector national certification as an alternative to state regulation.

If deregulated, existing licensees would be relieved of the regulatory obligation to complete eight hours of continuing education and pay a \$50 fee every two years to renew their state credential.

Landscape Architects

In its report, JLARC acknowledged potential harm to the public from incompetent practice of landscape architecture; however, it concluded that licensure of landscape architects does not effectively address such risks because unregulated occupations (e.g., landscape designers, land planners) perform largely the same work and present the same potential dangers.

A landscape architect is defined in § 54.1-400 as follows:

“ . . . a person who, by reason of his special knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and whose competence has been attested by the Board through licensure as a landscape architect.”

Statute further defines the practice of landscape architecture:

“ . . . any service wherein the principles and methodology of landscape architecture are applied in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to projects principally directed at the functional and aesthetic use of land.”

However, the law does not restrict the scope of practice only to licensed landscape architects who use that title.⁸ Subsection B of § 54.1-409 states:

Nothing contained herein or in the definition of "practice of landscape architecture" or in the definition of "landscape architect" in § 54.1-400 shall be construed to restrict or otherwise affect the right of any architect, professional engineer, land surveyor, nurseryman, landscape designer, landscape contractor, land planner, community planner, landscape gardener, golf course designer, turf maintenance specialist, irrigation designer, horticulturist, arborist, or any other similar person from engaging in their occupation or the practice of their profession or from rendering any service in connection therewith that is not otherwise proscribed.

Initially, the legislature created the regulatory program governing landscape architects as a voluntary certification in 1980. During the 2009 Session of the General Assembly, the level of regulation increased to licensure with an effective date of July 1, 2010.

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (APELSCIDLA) administers and enforces the regulatory program for landscape architects. As of December 1, 2020, Virginia regulated 931 landscape architects,⁹ composing 2.1% of that board's regulant population.

⁸ Subsection A of § 54.1-409 states, in part, “Beginning July 1, 2010, a person who *engages in the practice* of landscape architecture as defined in § 54.1-400 and who *holds himself out as a landscape architect* shall hold a valid license prior to engaging in such practice.” [emphasis added]

⁹ In February 2009, when the General Assembly considered increasing the degree of regulation, Virginia certified 820 landscape architects.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of landscape architecture presents high risk of public harm. In addition to property damage and financial harm, incompetence may result in serious injury and even death. In a 2017 publication entitled [Landscape Architecture Licensing Handbook](#), the American Society of Landscape Architects (ALSA) provided empirical examples of physical harm—not specific to Virginia—such as:

- Electrocuting death from negligent outdoor lighting;
- Second- and third-degree burns from improperly placed lighting in outdoor shrubbery;
- Skull fractures, permanent loss of vision, quadriplegia, and death from obstructed views at intersections;
- Eye injury from an inappropriately placed thorny tree in apartment complex common area;
- Broken spine from 20-foot fall off “soft edge” of poorly designed recreational trail;
- Death after falling from parking lot designed without guardrail or fence to prevent drop-off;
- Fractured hip from trip-and-fall because of building threshold grading error; and
- Fatality linked to a fire ant attack from irrigation design defects that unevenly applied water and hampered pest control efforts.

As JLARC noted, however, Virginia’s existing regulatory program may not effectively address the risks because unregulated individuals are allowed to perform similar work.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment unanimously supported continued licensure of landscape architects. Of 253 total comments received regarding landscape architects, 26% self-identified as non-practitioners, including affiliated design professionals who rely on the services licensed landscape architects provide.

Total Comments in Support of Continued Regulation	253 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)

Comments from Non-Practitioners in Support of Continued Regulation	65
Comments from Non-Practitioners Opposed to Continued Regulation	0

In addition, according to the Alliance for Responsible Professional Licensing (ARPL)—a consortium of national trade associations including ASLA and the Council of Landscape Architectural Registration Boards (CLARB)—consumers overwhelmingly endorsed continued licensure for landscape architects and other “highly technical professions” in national opinion survey.¹⁰

¹⁰ See <http://www.responsiblelicensing.org/fast-facts/>

3. The number of states which have regulatory provisions similar to those proposed.

Virginia and 46 other states—as well as the District of Columbia and Puerto Rico—currently license landscape architects through regulation of practice and title. Maine and Massachusetts regulate landscape architects through title protection only.

Illinois sunset its title protection act for landscape architects effective January 1, 2020. Legislation to reinstate its regulatory program is pending as the Illinois General Assembly canceled its fall session due to COVID-19.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires landscape architecture services for a variety of public and private land development purposes such as site plans, vehicular roadway and pedestrian system designs, storm water and erosion control plans, and siting of buildings and structures. Increased frequency of coastal flooding and the threat of sea level rise is likely to increase demand for landscape architects.

In addition, demand for the regulated profession is reflected through Virginia’s top-ranked landscape architecture degree programs: the undergraduate and graduate programs at Virginia Tech and the graduate program at the University of Virginia. Public commenters noted that both programs attract outstanding candidates from the Commonwealth, the United States, and worldwide, and suggested deregulation or voluntary certification may result in reduced enrollments and recent graduates leaving Virginia for states with licensure programs.

If the profession is deregulated, there is no regulated substitute for landscape architects (although some practice overlap exists with other licensed design professionals such as architects and professional engineers).

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Licensed landscape architects must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 10-20-690 et seq.).

ASLA requires adherence to its published [Code of Professional Ethics](#) for members. In addition, members must abide by ASLA’s [Code of Environmental Ethics](#). (Membership in the professional association is optional; not every individual engaged in practice is obligated to join or follow the organization’s standards.)

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

The practice of landscape architecture is highly specialized and requires practitioners to demonstrate minimum competency in areas including ecological systems; hydrology; land use and zoning; construction methods and building codes; accessibility standards; and federal, state, and local environmental laws.

It is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency. Public commenters also indicated that the design and

construction industry that relies on the services of landscape architects is similarly ill equipped to evaluate their competency without the assurance licensure provides.¹¹

Regulation of practice and title appears necessary to provide the public with a substantial basis for relying on the services of landscape architects.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

ASLA requires adherence to its published Code of Professional Ethics, which includes mandatory reporting by members of violations by other members. The professional association also investigates complaints of potential violations and may impose sanctions including member suspension or expulsion.¹²

(Membership in the professional association is optional; not every individual engaged in practice is obligated to join or follow the organization's standards.)

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against licensed landscape architects resulting in disciplinary action. That data may indicate the existing regulatory system of licensure is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

Building codes and inspections, local land use and zoning ordinances, and other licensed design professionals are likely inadequate to protect the public from incompetent landscape design practice. Additionally, as JLARC noted, the current regulatory framework may not be effective or adequate at addressing risk because unregulated occupations (e.g., landscape designers, land planners) can perform similar work and present the same potential dangers.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Although affiliated design professionals collaborate frequently, which mitigates the risk of incompetent practice, they do not possess the same specialized knowledge to evaluate the competency of landscape architects.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Whether landscape architects are designing a private residential project or working on a public-sector commercial site, their services affect the health, safety, and welfare of third parties who eventually use those spaces.

¹¹ See <https://www.vaasla.org/VA-ASLA-Virginia-White-Paper/>

¹² See ASLA's [Rules of Procedure for Filing and Resolution of a Complaint](#)

Assessment

Licensure appears to be the most appropriate, least-restrictive level of regulation for landscape architects.

RISK	High potential.
SKILL + TRAINING	Highly specialized education required.
AUTONOMY	Largely autonomous practice, though often collaborating with other licensed professionals; little or no direct supervision.
SCOPE OF PRACTICE	Definable in enforceable legal terms; some practice overlap with other licensed professionals and unregulated individuals.

To address concerns raised by JLARC about potential public harm presented by unregulated occupations performing largely the same services, the General Assembly may wish to consider reserving aspects of the scope of practice only to licensed professionals.

DRAFT AGENDA
Materials contained in this agenda are for discussion purposes only and are not to be construed as a regulatory proposal.
DRAFT AGENDA

Assessment of potential impact of de-certification

In its 2018 report, JLARC determined several currently voluntary certification programs established by the General Assembly and administered by DPOR are unnecessary (see Table 2-3 from JLARC report below).

TABLE 2-3
Some DPOR certifications are duplicative of national certifications

	National certification exists?	Qualification requirements are similar?
Community manager employees 296 regulants	✓	✓
Interior designers 491 regulants	✓	✓
Backflow prevention device workers 1,377 regulants	✓	✓
Natural gas auto mechanics 0 regulants	✓	✓
Wetland delineators 114 regulants	✓	

Although its analysis suggested these occupations do not meet the statutory criteria for regulation, JLARC acknowledged that eliminating state certification may harm current certificate holders due to lack of uniformity and increased economic costs.

Therefore, before the General Assembly takes any action, **JLARC recommended that BPOR review the need for continued state certification and evaluate potential impacts of deregulation on existing regulants.**

Common Interest Community Manager Employees

According to JLARC's analysis, regulation of community manager employees is unwarranted, overly burdensome, and completely duplicative of national certifications. The report noted:

For community manager employees, individuals with one of three nationally recognized credentials in community management automatically qualify for a state certificate. This equivalency means that the national and state certifications are essentially interchangeable.

In terms of potential harm, JLARC estimated the risk to be low because associations are already required to be bonded or insured against losses from theft or dishonesty by managers and their employees.

During the 2008 Session of the General Assembly, the legislature created the Common Interest Community Board to regulate common interest community (CIC) managers as well as their principal or supervisory employees. Pursuant to subsection C of § 54.1-2346, a prerequisite for CIC managers to obtain or renew licensure includes ensuring their covered employees, defined below, are properly certified:

"... all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager."

As of December 1, 2020, Virginia regulated 313 CIC manager employees (also referred to as certified principal or supervisory employees), composing 65% of that board's non-association regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

CIC manager employees present no risk *to the public* if unregulated. The harm they may present to *association members* from financial abuse or mismanagement is mitigated by employer oversight as well as statutory requirements for associations to maintain continuous bonding or insurance against losses from theft or dishonesty by managers and their employees.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment overwhelmingly supported continued regulation of CIC managers or their employees. (Many comments focused on licensure of CIC managers specifically, which was outside the scope of this evaluation.)

Of 20 total comments received regarding CIC managers or their employees, 25% self-identified as non-practitioners who work with or rely on the services provided by licensed CIC managers or certificate holders.

Total Comments in Support of Continued Regulation	19 (95%)
Total Comments Opposed to Continued Regulation	1 (5%)

Comments from Non-Practitioners in Support of Continued Regulation	5
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

In addition to Virginia, seven other states regulate CIC managers or their employees to some extent. Colorado eliminated its licensing program for CIC managers effective June 30, 2019.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

Virginia regulated 169 CIC managers and 313 CIC manager employees as of December 1, 2020. Substitutes are available to meet demand for certified CIC manager employees if the profession is deregulated.

The following national credentials currently qualify an individual for Virginia’s CIC manager employee certificate and could serve as an alternative to state regulation:

- Association Management Specialist (AMS)
- Certified Manager of Community Associations (CMCA)
- Professional Community Association Manager (PCAM)

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Certified CIC manager employees must comply with Standards of Conduct and Practice enumerated in board regulations (18 VAC 48-50-140 et seq.).

Community Associations Institute (CAI) requires adherence to its published [Code of Ethics](#) as a condition of national certification as an AMS or PCAM.

The Community Association Managers International Certification Board (CAMICB) requires CMCA-certificate holders to comply with its [Standards of Professional Conduct](#).

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

CIC manager employees are hired by licensed CIC managers to provide services to associations, not consumers or the public. Because eligibility requirements for CAI and CAMICB credentials are equivalent to the entry standards for state certification, management companies and association governing boards can rely on the national designations to provide assurance of minimum competency.

Potential harm to association members from financial abuse or mismanagement is mitigated by employer oversight as well as statutory requirements for associations to maintain continuous bonding or insurance to protect against losses from theft or dishonesty by managers and their employees.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

CAI and CAMICB require adherence to published codes of conduct, which include mandatory reporting by certified individuals of other certificate holders who have deviated from professional standards. In addition, CAI-certified individuals must complete continuing education every three years as a condition of renewal.

The professional associations also investigate complaints of potential violations and may impose sanctions including suspension or revocation of certification.¹³

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against CIC manager employees resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

Statutory requirements for associations and licensed CIC managers to maintain continuous bonding or insurance to protect against losses from employee theft or dishonesty appear adequate to mitigate risks of harm.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Statutory requirements for bonding or insurance to protect against losses from employee theft or dishonesty mitigate risk of incompetent practice by CIC manager employees, who do not provide direct services to consumers or the public. In addition, CIC managers are responsible for overseeing the practice actions of their employees.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Although CIC manager employees do not provide direct services to consumers or the public, their work can expose owners in common interest communities to potential harm. However, the risk of incompetent practice is mitigated by employer oversight as well as statutory requirements for associations to maintain continuous bonding or insurance against losses from employee theft or dishonesty.

Assessment

No level of occupational regulation appears warranted for CIC manager employees.

RISK	N/A
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.

¹³ See https://www.caionline.org/LearningCenter/credentials/Documents/ethics_enforcement.pdf and <https://www.camicb.org/SiteCollectionDocuments/CAMICB%20Enforcement%20Procedures.pdf>

AUTONOMY	Variable; majority of practice actions directed or supervised by licensed CIC Manager.
SCOPE OF PRACTICE	Definable in enforceable legal terms.

The General Assembly may wish to consider eliminating the certification requirement and rely instead on national designations as an alternative to state regulation, together with statutory requirements for associations to maintain continuous bonding or insurance against losses from employee theft or dishonesty.

If deregulated, existing certificate holders would be relieved of the obligation to pay a \$75 fee every two years to renew their state credential. Individuals who qualified for their Virginia certificate based on holding a national designation from CAI or CAMICB could maintain their private certification.

AMS Certification requires an annual maintenance fee of \$85 for CAI members and \$310 for non-members. To recertify, AMS certificate holders must complete one CAI course and eight hours of other industry-related continuing education every three years.

PCAM Certification requires an annual maintenance fee of \$160 for CAI members and \$385 for non-members. To recertify, PCAM certificate holders must complete 12 hours of continuing education every three years.

CMCA Certification from CAMICB requires an annual service fee of \$115. To recertify, CMCA certificate holders must complete 16 hours of continuing education every two years.

Interior Designers

In its report, JLARC determined the requirements for national and state certification of interior designers are nearly identical. It concluded that continued regulation appears unnecessary and “offers no additional assurance of competency for this occupation.”

Certified interior designers are defined in § 54.1-400 as “a design professional who meets the criteria of education, experience, and testing in the rendering of interior design services established by the Board through certification as an interior designer.”

Statute further defines interior design by a certified interior designer as:

“ . . . any service rendered wherein the principles and methodology of interior design are applied in connection with the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment. Such services relative to interior spaces shall include the preparation of documents for non load-bearing interior construction, furnishings, fixtures, and equipment in order to enhance and protect the health, safety, and welfare of the public.”

The title protection law—enacted during the 1990 Session of the General Assembly—does not restrict the scope of practice and serves as the framework for the voluntary certification program. While only state-certified interior designers may use the title, any individual may render services as an interior designer, interior decorator, or similar.

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (APELSCIDLA) administers and enforces the regulatory program for certified interior designers. As of December 1, 2020, Virginia regulated 483 certified interior designers, composing 1.1% of that board’s regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of interior design presents at least a moderate risk of public harm. The involvement of other regulated design professionals or building codes and inspections may not be sufficient to mitigate potential hazards to public health, safety, and welfare.

Although interior designers can perform residential work, many focus on public spaces such as hospitals, schools, nursing homes, government facilities, and office buildings. Minimally competent interior design services protect the public by, for instance:

- Ensuring safe evacuation from interior spaces in emergency situations, by planning clear circulation paths that lead to building exits;
- Minimizing fire and toxic smoke hazards, through knowledge of fire ratings and material properties for different types of interior spaces;
- Reducing accidental injuries due to falls, by applying technical knowledge of friction coefficient, a factor in slip resistance, for high-traffic areas such as public building entrances and lobbies; and
- Specifying proper lighting fixtures, to ensure ability to see transitions in floor levels, read directional signage, and impart an overall feeling of safety.

Public commenters underscored the potentially significant risk, especially in light of the pandemic as health care facilities have required redesign and space planning to accommodate COVID surges and as Virginians return to stores, offices, and schools. For example, the National Fire Protection Association (NFPA) recently emphasized services offered by interior designers—egress management, occupant flow, partition placement, and seating arrangements—as areas of particular importance for building owners and facility managers reopening under COVID-19 safety protocols in its [Fire and Life Safety Checklist](#).

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment overwhelmingly supported continued certification of interior designers. Of 419 total comments received regarding interior designers, 27% self-identified as non-practitioners.

Among the non-practitioners, 57 volunteered that they work with or rely on the services provided by certified interior designers. (The other non-practitioner respondents did not specify their relationship to the profession.)

Total Comments in Support of Continued Regulation	418 (99.8%)
Total Comments Opposed to Continued Regulation	1 (0.2%)

Comments from Non-Practitioners in Support of Continued Regulation	113
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

Effective July 1, 2020, Florida transitioned its regulatory program for interior designers to voluntary certification, leaving two states (Louisiana and Nevada)—as well as the District of Columbia and Puerto Rico—that license interior designers through regulation of practice and title.

Twenty-five states (including Virginia and, now, Florida) certify interior designers through title protection only. The profession is unregulated in the remaining 23 states.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires interior design services provided through public and private contracts for construction or renovation at hospitals, schools, nursing homes, office buildings, and government facilities.

The National Council for Interior Design Qualification (NCIDQ) administers the exam used to qualify for Virginia’s existing interior design certification, and also offers national certification for those who pass the competency assessment. According to the NCIDQ online searchable database, there are at least 500 active NCIDQ certificate holders in Virginia.¹⁴

However, according to public commenters including the NCIDQ Chief Executive Officer, the national certification is not an alternative to state regulation because the organization is not a sanctioning body

¹⁴ Retrieved December 5, 2020, from <https://www.cidq.org/certified-designer-search-page>.

and does not evaluate competency to practice beyond initial exam administration. If the profession is deregulated, there is no equivalent regulated substitute.

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Certified interior designers must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 10-20-690 et seq.).

NCIDQ requires adherence to its published [Code of Ethics](#) for certificate holders.

The American Society of Interior Designers (ASID) requires adherence to its published [Code of Ethics and Professional Conduct](#) for members. Members of the International Interior Design Association (IIDA) must observe its [Code of Ethics](#) as well.

(Membership in professional associations is optional; not every individual engaged in practice is obligated to join or follow an organization's standards.)

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

The practice of interior design is specialized and requires practitioners to demonstrate competency in areas including fire, life-safety, building, and energy codes; space planning and wayfinding; interior building materials, finishes, furnishings, and equipment; lighting and acoustics; accessibility standards; ergonomics and anthropometrics; and human environmental behavior.

It is unlikely that consumers or the public would be able to select a qualified practitioner without some assurance of minimum competency. Eligibility requirements for NCIDQ Certification provide sufficient assurance of minimum qualifications to enter (though not necessarily remain in) the profession.

A system of certification appears to be least restrictive level of regulation to provide the public with a substantial basis for relying on the services of interior designers.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

NCIDQ certificate holders must complete six hours of continuing education every two years. However, the organization is not a sanctioning body and does not investigate or discipline incompetent practice by individuals who are nationally certified.

ASID requires adherence to its published Code of Ethics and Professional Conduct, which includes mandatory reporting by members of violations by other members. Additionally, ASID members must complete 10 hours of continuing education every two years as a condition of renewal. ASID investigates complaints of potential violations and may impose sanctions including suspension or termination of membership.¹⁵

¹⁵ See <https://www.asid.org/resources/about/ethics/file-a-complaint>

(Membership in ASID is optional; not every individual engaged in practice is obligated to join or follow the organization’s standards.)

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against certified interior designers resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The involvement of other regulated design professionals or building codes and inspections may not be adequate to mitigate potential hazards to public health, safety, and welfare. For instance, public commenters noted that incremental interior changes over the life of a public space—e.g., reconfiguration of open office and systems furniture, replacement of finishes such as wallcovering and flooring, moveable modular wall panels—often introduce potential hazards but generally do not require external oversight.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Interior design is a specialized field. The involvement of other regulated design professionals or building codes and inspections may not be sufficient to mitigate potential hazards to public health, safety, and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Whether certified interior designers are working on a private residential project or a public-sector commercial site, their services affect the health, safety, and welfare of third parties (e.g., guests, patients, students, visitors, employees) who eventually use those spaces.

Assessment

State certification appears to be the most appropriate, least-restrictive level of regulation for interior designers.

RISK	Moderate potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Largely autonomous practice, though often collaborating with other regulated professionals; little or no direct supervision.
SCOPE OF PRACTICE	Definable in enforceable legal terms; practice not reserved; title protection.

The General Assembly may wish to consider the following potential impacts on current certificate holders before taking action on JLARC’s recommendation to eliminate state certification and instead rely on NCIDQ national certification as an alternative.

If deregulated, current certified interior designers would be relieved of the obligation to pay a \$45 fee every two years to renew their state credential. Individuals who choose to maintain NCIDQ Certification as an alternative would pay \$75 annually to the national association and complete six hours of continuing education every two years.

Public commenters expressed concern that deregulation could result in significant economic disruption for current certificate holders by jeopardizing their practice rights and entrepreneurship opportunities. Elimination of state certification would result in interior designers losing the autonomy to practice without oversight from a licensed design professional. For example, interior designers would need to hire consulting architects or professional engineers to stamp their work, at increased cost to their businesses and clients.

In addition, because statutes governing professional corporations require owners and principals be licensed or state certified,¹⁶ deregulation would prevent interior designers from board participation at regulated design firms. According to IIDA, of the nearly 1,300 interior design firms in Virginia, 96% are small businesses of four or fewer employees, and 83% are women- or minority-owned. National certification does not confer practice rights and would not allow interior designers to become owners and principals of regulated design firms.

Commenters also indicated that deregulation might unfairly exclude current certified interior designers from competition for federal, state, and local contracts that often require work be completed by regulated professionals. For instance, the standard U.S. General Services Administration (GSA) form used to report qualifications for key personnel on proposed federal contracts requires “information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.”

However, if the Virginia certification program is eliminated, Federal Acquisition Regulation (FAR) Part 36.609-4(b) allows solicitations to omit the designer registration requirement, “when the design will be performed in a State or outlying area of the United States that does not have registration requirements for the particular field involved.”¹⁷

Although existing Virginia certificate holders qualify for the national designation, NCIDQ Certification is not an equivalent substitute for state regulation and may not adequately protect the public. NCIDQ is not a sanctioning body and does not investigate or discipline incompetent practice by individuals who hold national certification.

¹⁶ See §§ 13.1-549 and 13.1-1111 of the Code of Virginia

¹⁷ See https://www.acquisition.gov/far/part-36#FAR_36_609_4

Backflow Prevention Device Workers

JLARC's analysis concluded the regulatory program for backflow prevention device workers is unnecessary and "largely duplicative of national and local training certifications." Its report cited the establishment of a uniform credential for recognition across localities as a primary rationale for requiring state certification; however, occupational recognition is not one of the statutory criteria for regulation.

A backflow prevention device worker is defined in § 54.1-1128 as follows:

" . . . any individual who engages in, or offers to engage in, the maintenance, repair, testing, or periodic inspection of cross connection control devices, including but not limited to reduced pressure principle backflow preventors, double check-valve assemblies, double-detector check-valve assemblies, pressure type vacuum breaker assemblies, and other such devices designed, installed, and maintained in such a manner so as to prevent the contamination of the potable water supply by the introduction of non-potable liquids, solids, or gases, thus ensuring that the potable water supply remains unaltered and free from impurities, odor, discoloration, bacteria, and other contaminants which would make the potable water supply unfit or unsafe for consumption and use."

During the 1996 Session of the General Assembly, the legislature transferred regulation of backflow prevention device workers from localities to DPOR, with a delayed implementation date of July 1, 1998. Localities are required to accept state certification as proof of minimum competency, but may impose restrictions on uncertified backflow prevention device workers.

The Board for Contractors administers and enforces the regulatory program for backflow prevention device workers. As of December 1, 2020, Virginia certified 1,468 backflow prevention device workers; composing 1.7% of that board's regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

Backflow prevention device workers perform a service with high potential for public harm because incompetent practice can result in the contamination of our water supply.

Building codes and inspections alone are likely inadequate to protect the public from the risks of incompetent practice.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment unanimously supported continued certification of backflow prevention device workers. Of 78 total comments received regarding backflow prevention device workers, 38% self-identified as non-practitioners, many representing local governments and utility providers that rely on the services provided by certificate holders.

Among the commenters advocating for continued state regulation:

- Augusta County Service Authority
- City of Chesapeake

- Chesterfield County Buildings and Grounds
- Fairfax County Land Development Services
- Hampton Roads Planning District Commission
- Henrico County Public Utilities
- Isle of Wight County Utility Services
- James City Service Authority
- Lynchburg Water Resources
- Newport News Waterworks Department

Total Comments in Support of Continued Regulation	78 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)

Comments from Non-Practitioners in Support of Continued Regulation	30
Comments from Non-Practitioners Opposed to Continued Regulation	0

3. The number of states which have regulatory provisions similar to those proposed.

All 50 states regulate the services provided by backflow prevention device workers to some degree. Approaches vary widely, ranging from state-administered licensure programs to private-sector certification required at the local level.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

A substantial portion of the population requires the services provided by backflow prevention device workers to prevent contamination of our water supply.

Licensed plumbers and HVAC tradesmen are also qualified to perform the work; however, it is unlikely an adequate supply of those tradesmen would be available to meet demand given existing shortages in those fields. If the profession is deregulated, a variety of private third-party credentials could serve as alternatives to state regulation.

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Certified backflow prevention device workers must comply with Standards of Conduct enumerated in board regulations (18 VAC 50-30-185).

By its nature, the occupation demands high standards because backflow prevention device workers are entrusted to keep our water supply safe for consumption and use.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

Backflow prevention is a specialized trade. It is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency. Local governments and utility providers that employ backflow prevention device workers, however, likely have the ability to verify their competency.

A system of certification appears to be at least a least-restrictive level of regulation to provide the public with a substantial basis for relying on the services of backflow prevention device workers.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

Several associations offering certifications for backflow prevention device workers assess competency to practice through refresher courses, re-examination, or continuing education as a condition of renewal.

(Membership in a professional association is optional; not every individual engaged in practice is obligated to join or follow the organization's standards.)

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against certified backflow prevention device workers resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

Building codes and inspections alone are inadequate to protect the public from the significant risks of incompetent practice.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Backflow prevention is a specialized trade. Building codes and inspections alone are not sufficient to protect the public from the significant risks of incompetent practice.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

The services provided by backflow prevention device workers, if performed incompetently, risk contaminating the water supply and making it unfit or unsafe for consumption and use by third parties.

Assessment

State certification appears to be the most appropriate, least-restrictive level of regulation for backflow prevention device workers.

RISK	High potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; majority of practice actions directed or supervised by others.
SCOPE OF PRACTICE	Definable in enforceable legal terms; some practice overlap with licensed professionals.

The General Assembly may wish to consider the following potential impacts on current certificate holders before taking action on JLARC's recommendation to eliminate state certification and instead rely on national or local certifications as alternatives.

If deregulated, current certified backflow prevention device workers would be relieved of the obligation to complete eight hours of continuing education¹⁸ and pay a \$50 fee every two years to renew their state credential.

However, deregulation may significantly increase the compliance burden on current certificate holders, particularly for those who work in more than one locality if those jurisdictions require different credentials. Depending on the particular training program an individual completed to obtain state certification, they may not qualify automatically for whatever private credential a locality might require.

For instance, if a current certified backflow prevention device worker does not already hold a credential from the American Society of Sanitary Engineering (ASSE), in order to obtain ASSE Backflow Prevention Assembly Tester certification he will need to:

- Complete the ASSE-approved training course (ranging from \$800-\$1000);
- Pass written and practical end-of-course exams; and
- Pay the \$85 membership fee to ASSE.

Recertification is required every three years to maintain ASSE certification, by completing an approved refresher course (ranging from \$375-\$525) and passing written and practical end-of-course exams.

Finally, deregulation conflicts with an in-process Virginia Department of Health regulatory action to amend its Waterworks Regulations. The proposed action, now at the final stage, would mandate that anyone who tests and repairs backflow prevention assemblies and devices be a DPOR-certified backflow prevention device worker (effective January 1, 2022).

¹⁸ Certificate holders in their first two-year renewal cycle are exempt from the continuing education requirement (18 VAC 155-20-160.D).

Wetland Delineators

JLARC determined the Virginia regulatory program for wetland delineators is unnecessary because national certification is available as a professional wetland scientist. However, although existing Virginia certificate holders likely qualify for the national certification, the third-party credential is not equivalent and may not offer the same public protection.

A Virginia certified professional wetland delineator is defined in § 54.1-2200 as “a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who is granted certification by the Board.” By comparison, non-certified wetland professionals are defined as “having special knowledge of wetland science and the methods and principles of wetland delineation¹⁹ as acquired by education and experience in the formation, description and mapping of wetlands.”

Statute further defines the practice of wetland delineation as:

“... the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings.”

The title protection law—enacted during the 2002 Session of the General Assembly with a two-year delayed effective date—does not restrict the scope of practice and serves as the framework for the voluntary certification program. While only certified professional wetland delineators may use the title, any individual may practice wetland delineation as a wetland professional.

The Board for Soil Scientists, Wetland Professionals, and Geologists administers and enforces the regulatory program. As of December 1, 2020, Virginia regulated 116 certified professional wetland delineators, composing 9.8% of that board’s regulant population.

Application of Criteria

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

The unregulated practice of wetland delineation presents a low risk of public harm. Potential hazards to public health, safety, or welfare are mitigated by the involvement of other regulated professionals, permitting authorities, and regulatory agencies.

According to public commenters, the tangible public harm that initially led to creation of Virginia’s landmark certification program—the first in the nation—was permitting problems and lawsuits against regulatory authorities resulting from unqualified individuals performing wetland delineations in the 1990s.

¹⁹ Wetland delineation means “delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types” (§ 54.1-2200).

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Public comment unanimously supported continued certification of wetland delineators. Of 142 total comments received regarding wetland delineators, 56% self-identified as non-practitioners.

Among the non-practitioners, 38 volunteered that they are industry partners who work with or rely on the services provided by certified professional wetland delineators. (The other non-practitioner respondents did not specify their relationship to the profession.)

Total Comments in Support of Continued Regulation	142 (100%)
Total Comments Opposed to Continued Regulation	0 (0%)
Comments from Non-Practitioners in Support of Continued Regulation	80
Comments from Non-Practitioners Opposed to Continued Regulation	0

Industry partners advocating for continued state certification cited the importance of wetland delineators assisting with permitting processes and possessing knowledge of Virginia-specific tidal and wetland ecology, a competency not required by the national credential.

3. The number of states which have regulatory provisions similar to those proposed.

Three other states (Minnesota, New Hampshire, and Wisconsin) also certify wetland delineators. No states license the practice of wetland delineation.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

Landowners and developers hire wetland delineators to identify the location and physical limits of wetlands; assess functions and values; assist with regulatory issues and permits; and advise on mitigation planning. Regulatory agencies often also engage their services for third-party review.

Public commenters indicated that demand for wetland delineators is increasing due to the dynamic composition of wetlands, sea level rise, and the redefinition of “adjacent wetlands” under the Navigable Waters Protection Rule.²⁰ According to DEQ, the recent U.S. Environmental Protection Agency (EPA) action does not replace or supersede state authority for permitting impacts to state waters.²¹ Therefore, Virginia may require more qualified practitioners for permitting activities affecting state wetlands that are no longer regulated by the federal government.

If the profession is deregulated, there is no equivalent regulated substitute. The Society of Wetland Scientists offers national certification as a Professional Wetland Scientist (PWS) that could serve as an alternative. However, public commenters emphasized that the national credential is inadequate to meet the demand for services provided by qualified wetland delineators who possess knowledge of Virginia-specific tidal and wetland ecology. The state certification exam also covers local and state regulations, crucial competencies not covered by any national credential.

²⁰ See <https://www.epa.gov/nwpr>

²¹ See <https://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Regulations.aspx>

5. Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.

Certified professional wetland delineators must comply with Standards of Practice and Conduct enumerated in board regulations (18 VAC 145-30-140 et seq.).

The Society of Wetland Scientists requires adherence to its published [Code of Ethics](#) as a condition of national certification.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.

The practice of wetland delineators is specialized. Certified professional wetland delineators must demonstrate minimum competency in four distinct areas: botany, soil science, hydrology, and state-specific tidal wetland definition. It is unreasonable to assume that consumers or the public would be able to select a qualified practitioner without assurance of minimum competency.

Eligibility requirements for PWS Certification appear to provide sufficient assurance of minimum competency in wetland science generally, though not wetland delineation in particular nor practice specific to Virginia.

A system of certification appears to be least least-restrictive level of regulation to provide the public with a substantial basis for relying on the services of wetland delineators.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

The Society of Wetland Scientists requires adherence to its published Code of Ethics, which includes mandatory reporting by PWS certificate holders of violations by other nationally certified individuals. In addition, PWS certificate holders must complete continuing education every five years as a condition of renewal.

The professional association also investigates complaints of potential violations and may impose sanctions including probation or de-certification.²²

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

In the last five fiscal years, DPOR has received no complaints against certified professional wetland delineators resulting in disciplinary action. That data may indicate the existing regulatory system of certification is effectively protecting the public; alternatively, no enforcement activity may reflect low overall risk associated with the occupation.

The involvement of regulatory agencies, permitting authorities, and licensed professionals who collaborate with wetland professionals may be adequate to mitigate risks to public health, safety, and

²² See <https://www.wetlandcert.org/docs/EthicsComplaintForm.pdf>

welfare. According to public commenters, inspection and private civil action alone proved insufficient in the 1990s to protect against permitting problems resulting from incompetent practice.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

Wetland delineation is a specialized field. The involvement of regulatory agencies, permitting authorities, and licensed professionals who collaborate with wetland professionals may be adequate to mitigate risks to public health, safety, and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Public- and private-sector entities hire wetland delineators to work on land use and infrastructure projects, so incompetent practice may expose the public to financial risk and jeopardize environmental resources.

Assessment

State certification appears to be the most appropriate, least-restrictive level of regulation for wetland delineators.

RISK	Low potential.
SKILL + TRAINING	Specialized; differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; often collaborating with other regulated professionals; oversight of practice actions by regulatory agencies and permitting authorities.
SCOPE OF PRACTICE	Definable in enforceable legal terms; title protection.

The General Assembly may wish to consider the following potential impacts on current certificate holders before taking action on JLARC's recommendation to eliminate state certification and instead rely on national certification as an alternative.

If deregulated, current certified professional wetland delineators would be relieved of the obligation to pay a \$70 fee every two years to renew their state credential.

Individuals who pursue national certification as an alternative would apply for Professional Wetland Scientist (PWS) designation by submitting a \$400 fee to the Society of Wetland Scientists; providing academic transcripts and professional references; and documenting their experience and publications in the area of wetland science.

Maintenance of PWS certification requires a \$75 annual maintenance fee; individuals must renew every five years by paying a \$100 recertification fee and satisfying continuing education requirements.

Although existing Virginia certificate holders likely qualify for the national certification, PWS Certification is not an equivalent substitute for state regulation and may not offer the same public protection. The national credential does not appear to provide sufficient assurance of minimum competency in Virginia-specific tidal and wetland ecology and local and state regulations.

Board for Professional and Occupational Regulation

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Department of Professional and Occupational Regulation

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2021 LEGISLATIVE UPDATE

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