



Fast Track Proposed Regulation Agency Background Document

Agency name	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Virginia Administrative Code (VAC) citation	18VAC160-20
Regulation title	Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations
Action title	Amend Definitions of Supervision, SDS Experience and Document Requirements for Installers
Date this document prepared	January 12, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed language changes the definitions of "direct supervisor" and "direct supervision", allowing licensees to supervise the work of unlicensed individuals who are not seeking licensure. Also, the requirements for applicants for an individual sewage system installer license have been modified to reflect current industry procedures consistent with the Virginia Department of Health (VDH). The experience requirement for the individual sewage system installer license has also been changed to allow an individual's installation experience to fulfill the requirement for licensure as long as the applicant's firm is properly licensed as a Virginia contractor with the specialty of Sewage Disposal Systems (SDS) at the time which he applies for the installer license.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

(1) The language was adopted on December 2, 2009, by the (2) Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. The language will amend the (3) Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

§ 54.1-201.5 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

§ 54.1-2301 D of the Code of Virginia states that, "The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii) operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems; and (f) other criteria the Board deems necessary."

The proposed language will reflect current procedures consistent with the Virginia Department of Health that pertain to the issuance of permits obtained by contractors for the installation of sewage systems, completion statements submitted to VDH by the contractor after the installation, and inspection report and completion statements submitted to VDH by a licensed soil evaluator or Virginia-licensed professional engineer. The requirement to provide these documents for an installer license will sufficiently demonstrate the individual's installation experience without overburdening him with unnecessary documents such as a system operation permit.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The changes to the regulations are necessary to allow individuals currently working in the water, wastewater, soil evaluation, sewage installation, or sewage operation industry to continue to work if under the direct supervision of a licensed individual. Licensees will supervise both individuals who are seeking experience for licensure as well as individuals who work in the industry but are not seeking licensure. Evaluation, installation, and operation duties will continue to be controlled by a properly licensed person

in order to continue to safeguard the public, but persons who are unlicensed, that work under the direct supervision of a licensee, will not be mandated to apply for licensure should they choose not to.

One goal of the proposed language includes amending the current requirements for documenting installation experience so as to make them more consistent with the true-to-life procedures in the onsite sewage system industry. Currently, a contractor completion statement and a separate AOSE/PE inspection report and completion statement is required by VDH after a system installation is complete.

In the proposed language, a sewage system installer license applicant would be required to submit copies of the contractor completion statements, corresponding inspection report and completion statements, and a signed statement from a supervisor within the company that performed the installation. This process is a standard that would apply to all installer applicants seeking to prove their qualifications for sewage system installation licensure. The applicant would merely need to provide copies of documents that are already required by VDH and kept as public records after the installation of a system.

Another goal of the proposed language is to allow technically qualified persons to obtain the installer license by proving their experience of installing systems without limiting them to the time period during which the contractor may or may not have had the SDS specialty on the contractor license. The current requirements preclude individuals from licensure who might otherwise be qualified, but whose firm may just not have had the SDS endorsement on the firm's contractor license during the time period of the employee's experience. The proposed language resolves this issue by separating the experience of the employee from the SDS endorsement on the firm's contractor license. The applicant must have certification of his experience and proof that the firm, of which he is either an employee or a member of responsible management, has a proper Virginia contractor license with the SDS specialty at the time of his individual installer application. This accomplishes two things: it allows minimally-qualified individuals to meet the requirements for licensure while simultaneously ensuring continued compliance of existing system installation contractors in Virginia.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This fast track process is non-controversial because it is less restrictive than the existing regulation language for the following reasons:

- 1) The current definitions of "direct supervisor" and "direct supervision" make a licensee responsible for the activities of an individual who is supposed to intend to become licensed. The proposed amendments to the language will alleviate the licensee of having to ascertain whether or not his supervised employees intend to apply for a license, but it continues to assure the public protection because the licensed supervisor is still responsible for all activities of the unlicensed individual.
- 2) The proposed change to the document requirements for an installer license applicant will require him to produce only the contractor completion statement and the corresponding inspection report, which he can obtain from VDH. This documentation is more valid proof to the Board that the individual is competent to

install sewage systems than the currently required operation permit, which is issued to the homeowner and does not verify the applicant's installation experience.

3) The current language for installer license applicants requires that their experience was gained while working for a firm that held the SDS specialty on its contractor license at the time of the employee's experience. This technically prevents otherwise qualified persons from obtaining the individual installer license whose firm may not have acquired the SDS specialty on the firm's contractor license. The proposed language allows these individuals' experience to count toward fulfilling the individual installer license requirements, regardless of whether the contracting firm had the SDS specialty at the time, as long as the firm has the SDS specialty at the time which the individual applies for his installer license.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Substantive changes include removing language from the definitions of "direct supervisor" and "direct supervision" which indicates that such supervision requires that the supervisee must intend to apply for a license. Entry requirements for installers are less restrictive than the current language, and the documentation requirements for installers to prove experience are changed to be consistent with VDH procedures involved in the installation of a sewage system. The changes, although substantive in nature, are less restrictive than current requirements.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1) The advantages to the public are less restrictive licensure requirements which still ensure minimum competency within the soil evaluation, septic installation, and septic operation fields.

2) The primary advantage to the Commonwealth is the continuance of a successful licensure program which meets the needs of protecting the public by ensuring minimum competency within the sewage system industry. Simultaneously, the regulated community is not faced with unnecessary difficulties in obtaining the licensure required to continue to perform its business in the Commonwealth.

3) The advantages to the public, including the regulated community, are detailed in items #1 and #2.

Requirements more restrictive than federal

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

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

The proposed changes are not relevant to any federal requirements.

Localities particularly affected

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

No localities are particularly affected by the proposed language.

Regulatory flexibility analysis

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

All substantive changes that are introduced are less restrictive than current requirements. The absence of any increase in restrictions to licensure precludes any requirement for regulatory flexibility in this instance.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>(a) Fund Source: NGF (0900) (b) One-Time: No one-time costs are expected as a result of this regulatory change. Ongoing: No ongoing costs are expected as a result of this regulatory change.</p>
<p>Projected cost of the regulation on localities</p>	<p>No change is anticipated</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The revised regulations apply to professionals working as on-site sewage system installers and contractors working with the Sewage Disposal System specialty. The regulations have no substantive affect on the installers or contractors.</p>

<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 104 licensed sewage system installers and about 1,459 licensed contractors with the Sewage Disposal System specialty.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>No change is anticipated.</p>

Alternatives

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

The proposed language itself is the alternative which offers lesser restrictions on the entry requirements to licensure for sewage system installers. The lesser restrictions continue to ensure minimum competency while incorporating the least intrusive standards to the regulated community.

Family impact

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

No family impact has been identified.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC160-20-10		The definitions of "direct supervisor" and "direct supervision" require that such supervision of an unlicensed individual indicates that the unlicensed individual must intend to apply for licensure.	The language is amended to state that a direct supervisor and direct supervision covers the supervision of an unlicensed individual whether that individual intends to apply for a license or not.
18VAC160-20-97.C.1.a		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>under the direct supervision of</u> an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience installing systems as long as the firm that he currently works for has the SDS specialty on the contractor license at the time which he applies for the installer license.
18VAC160-20-97.C.1.b		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>as</u> an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience installing systems as long as the firm, of which he is currently a member of responsible management, has the SDS specialty on the contractor license at the time which he applies for the installer license.
	18VAC160-20-97.C.1.c		18VAC160-20-97.C.1.a and 18VAC160-20-97.C.1.b both require that the applicant work for, or be responsible management of, a firm currently licensed as a contractor with the SDS specialty at the time of his application for the individual installer license. However, it is possible that an individual gained experience installing systems for a firm that is no longer in business. The addition of this provision satisfies this situation by recognizing the individual's experience as qualifying for licensure even though he does not currently work for an SDS contractor or is not currently a member of responsible management in an SDS contractor firm.
18VAC160-20-97.C.2.a		Requires that an applicant for an alternative installer license submit completion statements and operation	The new language removes the requirement to provide operation permits because they do not indicate an applicant's experience. The new language specifies the

		permits from VDH as proof of experience for work done after June 30, 2009.	two documents which will indicate an applicant's experience relevant to a sewage system installation. Both of the documents are public records maintained by and available from the local health department. The language is also changed to require certification from the appropriate qualified professionals in the septic installation industry.
18VAC160-20-97.C.2.b		Requires that an applicant for an alternative installer license submit completion statements and operation permits from VDH as proof of experience for work done on or before June 30, 2009.	The new language removes the requirement to provide operation permits because they do not indicate an applicant's experience. The new language specifies the two documents which will indicate an applicant's experience relevant to a sewage system installation. Both of the documents required are maintained by and available from the local health department.
18VAC160-20-97.C.2.c		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>as</u> an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience installing systems as long as the firm, of which he is currently a member of responsible management, has the SDS specialty on the contractor license at the time which he applies for the installer license.
18VAC160-20-97.C.2.d		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>under the direct supervision of</u> an SDS contractor	The new language separates the applicant's experience from the firm's contractor license SDS specialty. The new language will qualify an applicant with two years of experience installing systems as long as the firm that he currently works for has the SDS specialty on the contractor license at the time which he applies for the installer license.
	18VAC160-20-97.C.2.e		18VAC160-20-97.C.2.c and 18VAC160-20-97.C.2.d both require that the applicant currently work for, or be responsible management of, a firm currently licensed with the SDS specialty. However, it is possible that an individual gained experience installing systems with an SDS firm, but the firm is no longer in business. The addition of this provision satisfies this situation by recognizing the individual's experience as qualifying for licensure even though he does not currently work for an SDS contractor or is not currently a member of responsible management in an SDS contractor firm.
18VAC160-20-97.C.2		Requires that an individual be listed on the contractor completion statement in order for that statement to	Contractor completion statements specify the contractor (firm) that completed the installation, not the individuals involved. The provision of the completion statement alone

		verify his experience of installing a particular sewage system.	does not indicate if the applicant took part in the installation activities. The language is amended to require signed documentation from a supervisor of the installation firm where the applicant was employed. The documentation must verify that the individual was employed by the firm at the time of the installation and that he had performed the installation.
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