



Proposed Regulation Agency Background Document

Agency name	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (WWWOSSP)
Virginia Administrative Code (VAC) citation	18 VAC 160 -20
Regulation title	Board for Waterworks and Wastewater Works Operators Regulations
Action title	Implement 2007 Legislation
Date this document prepared	July 18, 2008

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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed amendments establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators as mandated by § 54.1-2301 C of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>). The amendments were developed in consultation with the Board of Health to adopt regulations for the licensure of onsite soil evaluators as well as installers and operators of alternative onsite sewage systems. The amendments include requirements for minimum education and training, relevant work experience, demonstrated knowledge and skill, fees to cover program costs, and other criteria that the Board deems necessary, as mandated by § 54.1-2301 D of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>).

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2301 B. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>) states that the Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators. Further, 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; and (e) other criteria the Board deems necessary.

The regulations are required to be in effect on July 1, 2009.

The imperative form of the verb “shall” is used, making the Board’s authority to regulate mandatory rather than discretionary.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The Virginia General Assembly, as evidenced by passing relevant legislation during the 2007 session, considered the regulation of onsite soil evaluators, sewage system installers, and sewage system operators as essential to protecting the health, safety, and welfare of the citizens of the Commonwealth. The Board has adopted the proposed amendments to its existing regulations to implement the regulation of Onsite Soil Evaluators, Onsite Sewage System Installers, and Onsite Sewage System Operators as mandated by the provisions of HB 3134 and SB 1270 passed by the 2007 Session of the Virginia General Assembly.

The goal is to transfer the existing Department of Health regulatory program for onsite soil evaluators to the Department of Professional and Occupational Regulation and to establish a new regulatory program for onsite sewage system installers and operators with a minimum adverse impact on commerce. Additionally, the goal includes assuring that competent professionals are available to the public in need of onsite sewage system products and services. The environment benefits by having onsite sewage systems planned, installed, and operated by competent individuals who can best guide the consuming public in managing wastewater so as to avoid adverse impact. The public will be readily able to identify and access the services of competent individuals through a regulatory program that does not currently exist.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

Section 18VAC160-20-10 is amended to add definitions necessary to implement the new provisions and to amend existing definitions to differentiate between the existing regulants and the new regulants.

Section 18VAC160-20-74 is amended to differentiate between the existing and the new regulants and to clarify which license is required to lawfully perform specific functions.

Section 18VAC160-20-76 is amended to conform to the Department's Model Regulations and to add language providing for the new professions.

Section 18VAC160-20-80 is amended to include the new professions.

Section 18VAC160-20-82 is a new section that creates an interim license for individuals holding a Virginia Department of Health (VDH) authorized onsite soil evaluation certification on the effective date of the regulation. Current VDH regulants are provided a means to continue lawful employment while preparing to meet the new regulation's licensing requirements.

Section 18VAC160-20-84 is a new section that creates an interim license for individuals who have been practicing as onsite sewage system installers and operators prior to the effective date of the regulation. Standards have been proposed that should allow those currently practicing to continue lawful practice after the effective date of the amendments under an interim license.

Section 18VAC160-20-90 is amended to make clear that its provisions apply only to waterworks and wastewater works operators.

Section 18VAC160-20-96 is a new section that creates qualifications for licensure for onsite soil evaluators.

Section 18VAC160-20-97 is a new section that creates qualifications for licensure for onsite sewage system installers.

Section 18VAC160-20-98 is a new section that creates qualifications for licensure for onsite sewage system operators.

Section 18VAC160-20-102 is amended to clarify that all fees are nonrefundable and deletes the dishonored check fee language. DPOR has statutory authority to recover dishonored check costs, and the regulation provision is no longer necessary. The application and renewal fees for the new professions will be the same as the existing professions.

Section 18VAC160-20-104 is amended to make its provisions applicable to those holding interim licenses as well as those holding licenses and provisional licenses.

Section 18VAC160-20-106 is amended to enable the licenses for onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators to expire 24 months from the last day of the month wherein issued. The amendment also makes interim licenses non-renewable, and it makes the act of submitting a license renewal application and fee to DPOR serve as a certification by the licensee that he is in compliance with the Board's regulations and has completed the required Continuing Professional Education (CPE).

Section 18VAC160-20-109 is amended to establish a continuing professional education (CPE) requirement of 10 hours per 24-month license cycle for conventional evaluators, installers, and operators; and 20 hours per 24-month license cycle for alternative evaluators, installers, and operators.

Section 18VAC160-20-140 is amended to include the new professions, including those holding an interim license, under the Standards of Practice provisions currently applicable to waterworks and wastewater works operators. A new subsection is added to enable the Board to discipline any licensee or interim licensee who undertakes to perform or performs a professional assignment for which he is not qualified by education or training.

Section 18VAC 160-20-150 is amended to allow the new professions to qualify for experience substitutions in the same manner as Class I, Class II, and Class III waterworks and wastewater works operators.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) The primary advantage to the public is the availability of minimally-competent onsite sewage system professionals. More homes are being constructed on land that will not “perk,” making it critical to both the homeowner and to the environment that the more technologically-advanced sewage treatment systems be available through licensees competent to properly plan, install, and operate onsite sewage systems. There may be some disadvantage through higher costs for sewage goods and services; however, this impact was evaluated by the Department of Planning and Budget as a part of the legislative process during the 2007 Session. Staff and Committee members who developed this proposal did so with a strong concern to minimizing adverse impact.

2) The primary advantage to the agency and the Commonwealth is the successful implementation of a legislative mandate. No disadvantage has been identified.

3) Substantial consideration has been given to the inevitable impact of a new legislative mandate on those directly affected: the authorized onsite soil evaluators currently regulated by the Virginia Department of Health, the onsite sewage system installers and operators not currently regulated by any agency of the Commonwealth, as well as their clients. An interim license provision will allow those currently practicing to continue to practice lawfully for a period of time amply sufficient to meet the new licensing requirements. An orderly transition to the new regulatory program has been created.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are 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.

No applicable federal requirements have been identified.

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 locality has been identified as particularly affected.

Public participation

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

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

Anyone wishing to submit written comments may do so by mail, email, or fax to **David E. Dick, Executive Director, 9960 Mayland Drive, Richmond, VA 23233-1485, (804) 367-2648, fax (804) 527-4297, e-mail waterwasteoper@dpor.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

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. NFG (0900) b. One-time costs in FY09 include exam development costs, additional board meeting expenses, as well as the cost of postage, printing, and legal services for preparing the new regulations.</p> <p>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 anticipated.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The new regulations will affect professionals working in the fields of on-site soil evaluators, on-site sewage system installers, and on-site sewage system operators.</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>It is uncertain the number of professionals working in the Commonwealth. It is expected that there will be 500 to 1000 regulants.</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>It is expected that application, examination, and renewal fees will be similar to other professions within the Board. Application fees are currently \$100 and renewal fees per biennium are \$80 or \$40 annually. Applicants required to take an examination will incur an examination fee of approximately \$84.</p>
---	--

Summary:

This proposed regulation implements a regulatory program for onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators. The program is required as a result of the Acts of the 2007 General Assembly.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2009	FY 2010	FY2011	FY2012
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	40,104	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	40,104	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: One-time costs in FY09 include exam development costs, additional board meeting expenses, as well as the cost of postage, printing, and legal services for preparing the new regulations.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The new regulations will affect professionals working in the fields of on-site soil evaluators, on-site sewage system installers, and on-site sewage system operators.

Estimated Number of Regulators: It is uncertain the number of professionals working in the Commonwealth however, it is expected that there will be 500 to 1000 regulators.

Projected Cost to Regulators: It is expected that application, exam and renewal fees will be similar to other professions within the Board. Application fees are currently \$100 and renewal fees per biennium are \$80 or \$40 annually. Applicants required to take an exam will incur an exam fee of approximately \$84.

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.

Viable alternatives are limited by the specifics of the statutory mandate that the authorized onsite soil evaluator regulatory program be moved from the Board of Health to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (Board). The mandate also requires that the previously unregulated onsite sewage system installers and operators be regulated. The enabling statute empowers the Board to regulate individuals, not businesses. The Board has not lost sight of the fact that regulations affecting individuals do impact on businesses. The focus of the Board has remained on identifying the least intrusive provisions that will protect the public and the environment, which will also minimize adverse impact on businesses.

The experience of the Virginia Department of Health in regulating alternative onsite soil evaluators was drawn upon. The emergence and continuing emergence of more technologically-sophisticated alternatives to the traditional septic tank and drain fields, made necessary by the development of land that will not pass the "perk" test, was a major focus. The standards in the proposed amendments, while similar to those in the current Board of Health regulations, focus on the challenges brought about by the new technology. Simultaneously, the proposed amendment standards allow individuals that want to limit their practice to the more traditional septic tank and drain field systems to do so without incurring the costs to become competent with the new alternative systems.

The active participation of those in the currently unregulated onsite sewage system installer and operator community was sought by holding the first meeting of the Onsite Sewage Systems Professionals Committee (OSSP Committee) at the site of the Fall Conference of the Virginia Onsite Wastewater Recycling Association (VOWRA), an onsite sewage system industry organization. The OSSP Committee was originally appointed by the Board to develop proposed amendments to implement the 2007 Virginia legislation. The meeting reviewed the comment received during the then recently-ended NOIRA comment period and involved the views of 16 VOWRA members who attended the meeting.

The above-described efforts to involve knowledgeable individuals from the beginning facilitated a focus on the least intrusive and least costly alternatives that implement the legislative mandate.

Many of the individuals that will be regulated operate or are employed by small businesses.

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.

1) The establishment of the least stringent requirements for the newly regulated professions is evidenced by the language creating an interim license. Individuals currently practicing onsite soil evaluations, onsite sewage system installations, onsite sewage system operations, or any combination thereof will be able to continue practicing while they work to meet the new requirements for licensure.

The Board began the task of developing proposed regulation amendments to implement the regulation of onsite sewage system professionals (OSSP) by appointing a nine-member committee. The OSSP Committee was composed of newly appointed members, representing the OSSP community: Ron Thomas, Brooke Philpy, and "Trapper" Davis. Wes Kleene, the Board member representing the Virginia Department of Health (VDH), and Marcia Degen, the Board member representing the Virginia Department of Environmental Quality (DEQ), were appointed for their regulatory agency perspective. Doug Crooks, the Board member holding a Class I wastewater works operator license, was appointed for his wastewater operator perspective. Jack Vanderland, a former Board member representing DEQ, was appointed for his expertise in wastewater operations. Mr. Vanderland was later appointed by the Governor as a Citizen Member of the Board. Don Alexander, an administrator of the current VDH authorized onsite soil evaluator regulatory program, was appointed for his perspective and experience regulating onsite soil evaluators. Bob Lee, of the Loudoun County Health Department, was appointed for his experience with the installation and operation of onsite sewage systems in Loudoun County. Mr. Lee is also the 2007-2008 president of VOWRA.

The OSSP Committee met eight times between November 2007 and June 2008 to develop a draft of proposed regulation amendments, which the Board considered, modified, and adopted as proposed regulation amendments on June 25, 2008. The OSSP Committee first focused on the current regulation of authorized onsite soil evaluators (AOSE) by VDH. The VDH program does not differentiate between onsite soil evaluators for conventional systems (the familiar back yard septic tank and drain field) and alternative systems (using processes similar to those used by wastewater treatment facilities that produce little or no water discharge to the environment). Currently all VDH certified AOSEs are authorized to perform soil evaluations for conventional and alternative systems.

The focus of concern was on the soils matrix impact of alternative systems and the need for more specific knowledge in soil evaluation and system design than is required for conventional systems. In addition, the alternative systems are an emerging technology and subject to change, perhaps substantially, over the coming years. This led to the conclusion that the soil evaluators for alternative systems must have entry standards that assure that the new licensees understand the emerging technology and soils matrix impact.

In some parts of the Commonwealth, alternative systems are more in demand as the amount of land that will pass a "perk" test is diminishing, and this is creating an increased demand for alternative systems. However, in other parts of the Commonwealth, there is little demand for alternative systems as the result of much lower population densities and the availability of land that will "perk." The Board concluded that two levels of onsite soil evaluator were appropriate rather than one all-inclusive level. Those desiring to practice only with conventional systems would have the option of seeking a license limiting their practice

to conventional systems, while those desiring to practice with alternative systems (as well as conventional systems) would be required to seek an additional alternative soil evaluator license.

The first approach was to require two levels (level 1 and level 2) of licensure. After some consideration, this was abandoned for the terms “conventional” and “alternative” to describe onsite soil evaluators in terms of the authorized area of practice. Focus was placed on the entry standards appropriate for each license.

The concern for current AOSEs and for the public’s access to qualified onsite soil evaluator professionals was addressed by the creation of an interim license, as described in the opening paragraph. An interim license will allow those currently practicing under a VDH certification to continue practicing under a DPOR interim license. The public is assured of continued access to the existing competent professionals while the new regulatory program is being implemented. Current VDH AOSEs will have six months from the effective date of the final regulation to apply to DPOR for an interim onsite soil evaluator license. The interim license will be valid for a period of 36 months, allowing the interim licensee adequate time to meet the Board’s entry standards and pass the Board’s examination for conventional onsite soil evaluator, alternative onsite soil evaluator, or both.

No Virginia regulatory program currently exists for onsite sewage system installers and operators, so the Board’s OSSP Committee looked to other states, with disappointing results. No state could be identified with an enabling statute similar enough to Virginia’s to be of significant assistance. The following analysis of three states’ regulatory programs illustrates the variety of regulatory approaches currently in use:

The Pennsylvania program focuses on the duties of sewage enforcement officers (SEO). There is a relationship between local agencies and the state-level department (similar to Virginia county health departments and the Virginia Department of Health). Procedures are in place for certifying individuals; training is provided by Pennsylvania, and a certification examination must be passed. SEOs are attached to local agencies. “Local agencies” are, as defined in the Pennsylvania statute regulating sewage facilities, entities attached to a municipality or group of municipalities that are responsible for permitting and overseeing onsite sewage facilities.

The West Virginia program does certify septic system installers after passing a written examination; however, no training or experience requirement exists. There is no regulation of onsite system operators or of onsite soil evaluators.

North Carolina’s regulatory program consists of two parts. One part of the program includes *voluntary* certification for sanitary sewage system contractors who install, construct, repair, or maintain conventional septic tank systems. The other part of the program includes *mandatory* certification for contractors who install, construct, repair, or maintain sanitary sewage systems that are required to have an operation permit and that are not conventional septic tank systems. System operators must meet training, education, and experience requirements.

None of the states’ enabling statutes envisioned a regulatory system where individual licensees were responsible for soil evaluation, system installation, and system operation as envisioned by Virginia’s 2007 legislation. Generally, states had requirements for individual certification, as illustrated above, and the entry standards involved training, education, experience, and examination in various combinations; this is not materially different from the regulatory program that Virginia has used for the effective regulation of wastewater works operators for approximately 30 years. The Board made the decision to develop entry standards focusing on pertinent experience, relevant educational background, and a passing examination grade. The examinations will be developed for Virginia’s specific needs, utilizing the experience and insight of several subject matter experts (SME).

The Board has regulated the operators of Virginia wastewater facilities for many years and, as a result, has extensive knowledge of these professions. The new Board members from the onsite sewage system industry brought considerable specific expertise, especially in the area of soils matrix (which is the primary difference between wastewater facilities and onsite sewage systems). Drawing on this expertise,

the Board proposed regulation amendments that create specific experience, education, and examination requirements as the entry standard for installer and operator licenses. The standards for onsite sewage system installers' and operators' licenses are specific to conventional or alternative onsite sewage systems, for the same reasons as discussed above for onsite soil evaluators.

The OSSP Committee recommended 10 hours of continuing professional education (CPE) per two-year licensing period for conventional evaluators, installers, and operators and 20 hours for alternative evaluators, installers, and operators. VDH currently requires 20 hours of CPE every two years for AOSEs, and many of the industry organizations have similar CPE requirements for continuing membership. A CPE standard that requires completion of less than one hour per month is a minimum standard, especially in light of the changes in regulations and technology that have occurred (and are likely to occur in the future).

2) The only compliance or reporting requirement is the continuing professional education (CPE) requirement for license renewal. A requirement for licensees to report compliance through documentation submitted at the time of renewal was replaced with a provision making the act of applying for renewal an affirmative statement of CPE compliance, thus making the renewal process less burdensome for the regulants and staff. The Board will periodically select, at random, a number of regulants and require submittal of CPE documentation to determine compliance. Those unable to provide documentation will be subject to the disciplinary provisions of the Board's regulations.

3) Same as #2 above.

4) All of the performance standards are focused on the protection of the public and the environment through the regulation of individuals rather than the regulation of their employers or their businesses.

5) The Board has no statutory authority to regulate businesses but has not lost sight of the fact that regulations affecting individuals do impact on businesses. The focus of the Board has remained on identifying the least intrusive provisions that will protect the public and the environment and also minimize adverse impact on businesses.

Public comment

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

Commenter	Comment	Agency response
G. Michael Damron, P. E., Administrator Campbell County Utilities and Service Authority 20644 Timberlake Road, Lynchburg, VA 24502 mdamron@ccusa-water.com	In Campbell County, the Board of Supervisors amended County code stating that the Campbell County Utilities and Service Authority shall operate any on-site system that is used by 10 or more homes (or equivalent residential users). The Authority has selected the on-site system that meets its standards and will begin operating an on-site system for a County school. The manufacturer will provide all training and each wastewater operator will be trained. Requests that municipal operators	The Board is proposing that no person be allowed to act as an alternative onsite sewage system operator of an alternative onsite sewage system which exceeds 10,000 gallons per day design flow without possessing the appropriate class of wastewater works operator license in addition to an alternative onsite sewage system operator license. A system exceeding that capacity clearly needs a wastewater operator. Given the critical differences between onsite and VDH permitted wastewater treatment facilities operation standards, especially when it comes to effluent discharge, alternative onsite operators must have the required

	<p>of on-site systems be exempt from the requirement for an on-site sewage system operator license for licensed Wastewater Operators, at a minimum exempt Class I and Class II Wastewater Operator licensees.</p>	<p>experience and pass the Board’s alternative onsite sewage system operator examination to be minimally qualified.</p> <p>The Board has proposed an onsite sewage system operator course (to be approved by the Board) as an alternative to the experience requirement for those holding a wastewater works operator license.</p>
--	---	--

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	N/A	Definitions of terms used in the regulation language	<p>Added definitions to support the Onsite Sewage System Professionals regulatory program. The following definitions were added or amended:</p> <p>“Alternative onsite sewage system” is added to specify the alternative system’s characteristics.</p> <p>“Alternative onsite sewage system installer” is added to specify the tasks an alternative</p>

			<p>system installer may perform.</p> <p>“Alternative onsite sewage system operator” is added to specify the tasks an alternative system operator may perform.</p> <p>“Alternative onsite soil evaluator” is added to specify the tasks an alternative evaluator may perform.</p> <p>“Authorized onsite soil evaluator” or “AOSE” is added to specify the qualifications an AOSE must have to qualify for consideration under the proposed regulation.</p> <p>“Category” has been amended to include the new onsite sewage system professionals.</p> <p>“Continuing professional education” has been amended to include the new onsite sewage system professionals.</p> <p>“Conventional onsite sewage system” has been added to specify the characteristics of a conventional system.</p> <p>“Conventional onsite sewage system installer” is added to specify the tasks a conventional installer may perform.</p> <p>“Conventional onsite sewage system operator” is added to specify the tasks a conventional operator may perform.</p> <p>“Conventional onsite soil evaluator” is added to specify the tasks a conventional soil evaluator may perform.</p> <p>“Direct supervision” is added to clarify what activities comprise direct supervision.</p> <p>“Direct supervisor” is added to clarify who may be considered a direct supervisor.</p> <p>“Experience” is amended to include the new onsite sewage system professionals.</p> <p>“Interim license” is added to create an instrument for those currently practicing to allow them to continue lawful practice until they can qualify for a license.</p> <p>“Interim licensee” is added to refer to the holders of such licenses as referenced in the regulations.</p>
--	--	--	--

			<p>“Licensed operator” is amended to include an onsite sewage system operator.</p> <p>“Maintenance” is added to specify those tasks that are maintenance in nature.</p> <p>“Onsite sewage system” is added to specify the characteristics of an onsite sewage system.</p> <p>“Operator” is amended to include operators of onsite sewage systems.</p> <p>“Sewage” is added to specify the components that are to be treated by onsite systems.</p> <p>“Sewage handler” is added to describe an individual that performs specific tasks.</p> <p>“Sewerage system” is added to specify the characteristics of a sewerage system. The definition is drawn from the Sewage Handling and Disposal Regulations.</p> <p>“Structured training activity” is amended to add “distance learning,” thus allowing on-line and interactive courses.</p> <p>“Transportation” is added to differentiate vehicular movement of sewage from movement in pipes.</p> <p>“Treatment works” is added to specify what hardware and equipment comprise sewage treatment facilities. The definition is drawn from the Sewage Handling and Disposal Regulations</p> <p>“VDH” is added to allow its use in the regulation to replace “Virginia Department of Health.”</p> <p>“Wastewater works operator” is added to differentiate between wastewater works operators and onsite sewage system operators.</p> <p>“Waterworks operator” is added to differentiate between waterworks operators and onsite sewage system operators.</p>
18VAC160-20-74	N/A	Describes the circumstances that require an individual to possess a license in order to operate	Subsection B is amended to limit its application to just waterworks and wastewater works operators.

		lawfully. Currently, the regulation applies to individuals operating waterworks and wastewater works facilities.	<p>Subsection C is added to require that individuals performing the tasks encompassed by the 2007 legislation possess a license in order to practice lawfully.</p> <p>Subsection D is also added to require both an alternative onsite sewage system operator license and a wastewater works operator license to lawfully operate a facility that exceeds 10,000 gallons per day in design flow.</p>
18VAC160-20-76	N/A	Establishes general requirements that must be met by each license applicant, regardless of the nature of the license applied for.	<p>Current subsection E is deleted in its entirety, and its substance now appears in subsections E, F, G and H.</p> <p>Subsection E contains the substance of former subsection E 3, requiring each applicant to provide a home address on his application.</p> <p>Subsection F contains the substance of the former subsection E, requiring each applicant to have passed the Board's examination.</p> <p>Subsection G contains the language of former subsection E 2, requiring each applicant to be in good standing in every other jurisdiction where licensed.</p> <p>Subsection H contains the language of former subsection E 1, requiring applicants to be free of certain criminal convictions.</p> <p>Subsection I is added to make clear that those not meeting the qualifications in subsections G and H may be approved after consideration by the Board.</p> <p>Subsection J is added to move the provisions of 18VAC160-20-90 D to the general application section. There is no change in substance.</p> <p>Subsection K is added to move the provisions of 18VAC160-20-90 E to the general application section. There is no change in substance.</p>
18VAC160-20-80	N/A	Establishes entry standards for those holding a license in another jurisdiction.	Amendments are proposed to include the new onsite sewage system professionals in the language.
N/A	18VAC160-20-82	This is a new section.	Amendment to create an interim license for those who will hold a valid authorized onsite soil evaluator certificate issued by the

			<p>Virginia Department of Health on the effective date of the regulation.</p> <p>Subsection A provides for the issuance of an interim onsite soil evaluator license to any individual with a valid VDH authorized onsite soil evaluator certificate on the effective date of the regulation, provided that the Department receives their application within six months after the effective date of the chapter.</p> <p>Subsection B enables holders of an interim onsite soil evaluator license to act as both a conventional and alternative onsite soil evaluator during the term of the interim license.</p> <p>Subsection C limits the life of the interim license to 36 months following issuance. Interim licenses may not be renewed.</p> <p>Subsection D requires application for an interim license in compliance with 18VAC160-20-76 and evidence of a valid authorized onsite soil evaluator certification on the effective date of the regulation.</p> <p>The interim license was created as a grandparenting provision to allow those soil evaluators currently operating lawfully in Virginia to continue under the new regulations until such time as they could meet the new entry requirements, pass the examination, and become licensed. The standards were set at the minimum level that assures that the interim license applicant is minimally competent and allow adequate time to meet the standard mandated by the 2007 legislation.</p>
N/A	18VAC160-20-84	This is a new section.	<p>Subsections A and B enable application for an interim onsite sewage system installer and operator license, provided that the application is received in accordance with 18VAC160-20-76 within 12 months of the effective date of the regulations. Interim installer and operator licenses shall be valid for 24 months and shall not be renewed.</p> <p>Subsection C provides for the maintenance of onsite sewage system installer and operators licenses by applying for a full license under the provisions of 18VAC160-20-97 or 18VAC160-20-98 before the expiration of the interim license.</p>

			<p>Subsection D requires application in accordance with 18VAC160-20-76 and for each applicant to meet the specific entry requirements in the section.</p> <p>Subsection E sets the specific entry requirements for interim conventional onsite sewage system installers and interim alternative onsite sewage system installers. The standards recognize the work most likely being performed by competent individuals at the present time and allow those meeting the standard to qualify.</p> <p>Subsection F sets the specific entry requirements for interim conventional onsite sewage system operators and for interim alternative onsite sewage system operators. The standards recognize the work most likely being performed by competent individuals at the present time and allow those meeting the standard to qualify.</p> <p>The interim license was created as a grandparenting provision to allow those sewage system operators and installers currently operating lawfully in Virginia to continue under the new regulations until such time as they could meet the new entry requirements, pass the examination, and become licensed. The standards were set at the minimum level that assures that the interim license applicant is minimally competent and allow adequate time to meet the standard mandated by the 2007 legislation.</p>
<p>18VAC160-20-90</p>	<p>N/A</p>	<p>Currently this section sets the entry requirements to qualify for a waterworks operator license and for a wastewater works operator license.</p>	<p>The catch line and the opening paragraph have been amended to limit the provisions to waterworks operators and wastewater works operators.</p> <p>Subdivision c is added to subsection B 3 to enable experience obtained as a licensed alternative onsite sewage system operator to qualify for licensure as a Class IV licensee. The technology used in alternative onsite sewage systems is sufficiently similar to that used in wastewater works plants to assure minimal competence. The examination will be the ultimate determinant of minimal competence.</p> <p>Subsections D and E were repealed and added to the language in 18VAC160-20-76 as subsections J and K. As addressed</p>

			<p>above, the language concerning examinations has been moved to the section establishing the general entry requirements for all licenses.</p>
N/A	18VAC160-20-96	This is a new section.	<p>This new section sets the entry standards for conventional onsite soil evaluators and for alternative onsite soil evaluators.</p> <p>Subsection A requires application to be made in compliance with 18VAC160-20-76.</p> <p>Subsection B sets the entry requirements for both conventional onsite soil evaluator and alternative onsite soil evaluator.</p> <p>Subdivision B 1 requires conventional onsite soil evaluator applicants to possess a valid interim onsite soil evaluator license or to meet one of four options addressing education and experience in addition to passing the Board's examination.</p> <p>Subdivision B 2 requires alternative onsite soil evaluator applicants to possess a valid interim onsite soil evaluator license or a valid conventional onsite soil evaluator license, pass the Board's examination, and meet one of three education and experience requirements to qualify for a license.</p>
N/A	18VAC160-20-97	This is a new section.	<p>This new section sets the entry standards for conventional onsite sewage system installers and for alternative onsite sewage system installers.</p> <p>Subsection A requires application to be made in compliance with 18VAC160-20-76.</p> <p>Subsection B sets the entry requirements for both conventional onsite sewage system installers and alternative onsite sewage system installers.</p> <p>Subdivision B 1 requires conventional onsite sewage system installer license applicants to pass the Board's examination and meet one of two experience requirements.</p> <p>Subdivision B 2 requires alternative onsite sewage system installer license applicants to pass the Board's examination and meet one of two experience requirements.</p> <p>The final paragraph specifies how experience may be documented when the applicant was not a named individual on the contractor's completion statement and</p>

			<p>associated operation permit but did perform the work, provided that the documentation is received no later than 12 months after the effective date of the regulation.</p>
N/A	18VAC160-20-98	This is a new section.	<p>This new section sets the entry standards for conventional onsite sewage system operators and for alternative onsite sewage system operators.</p> <p>Subsection A requires application to be made in compliance with 18VAC160-20-76.</p> <p>Subsection B sets the entry requirements for both conventional onsite sewage system operators and alternative onsite sewage system operators.</p> <p>Subdivision B 1 requires conventional onsite sewage system operator license applicants to pass the Board’s examination and meet one of two experience requirements.</p> <p>Subdivision B 2 requires alternative onsite sewage system operator license applicants to pass the Board’s examination and meet one of three experience requirements.</p>
18VAC160-20-102	N/A	Current language establishes the fee structure for license application, license renewal, and examination.	<p>Subsection A was amended to emphasize that all fees are nonrefundable.</p> <p>Subsection D was repealed as current statute empowers the Department to recover dishonored check costs.</p> <p>No further amendment was needed as the fee structure applies to all licensees.</p>
18VAC160-20-104	N/A	Current language sets the standards for maintaining a license.	<p>The amendments are limited to adding “interim licenses” to the language, thereby; it requires holders of interim licenses to advise the Board of any change of name or address and to operate under the name in which the license is issued.</p>
18VAC160-20-106	N/A	Current language sets the standards for license renewal.	<p>Subsection A is amended to include onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators and sets the license expiration date at 24 months after the last day of the month wherein issued.</p> <p>Subsection B is added to make clear that interim licenses shall not be renewed.</p> <p>The current subsection B has been renumbered to subsection C.</p> <p>The current subsection C has been renumbered to subsection D and has been</p>

			<p>amended to include the new onsite sewage system professional licenses.</p> <p>Subsection E is added to enable the licensee's act of submitting a renewal fee to DPOR to serve as his certification that he is in compliance with the Board's regulations and the continuing professional education (CPE) requirements.</p> <p>Current subsections D, E, F and G have been renumbered as subsections F, G, H, and I, respectively.</p>
18VAC160-20-109	N/A	Establishes continuing professional education (CPE) requirements.	<p>The catch line and the language in subsections A and B have been amended to include the new onsite sewage system professional licenses. The CPE standards for waterworks operators remain the same. Conventional onsite soil evaluators, conventional onsite sewage system installers, and conventional onsite sewage system operators are required to have 10 hours of CPE during each two-year license period. Alternative onsite soil evaluators, alternative onsite sewage system installers, and alternative onsite sewage system operators must complete 20 hours of CPE during each two-year license period.</p>
18VAC160-20-140	N/A	Current language establishes standards of practice and grounds for discipline for waterworks operators and wastewater works operators.	<p>The opening paragraph is amended to include interim licensees under the Board's authority.</p> <p>Amendments are made to subsections 1, 2, 3, 4, 5, 6, and 7 to include interim licensees under the subsections' provisions and to replace waterworks and wastewater works language with language including all licenses to implement the 2007 legislation.</p> <p>Subsection 8 has been added to empower the Board to take disciplinary action against a licensee found to have undertaken or to have performed a professional assignment for which he is not qualified to perform by education, training, or both.</p>
18VAC160-20-150	N/A	Current language establishes standards for training courses that may be used by license applicants to substitute for professional experience.	<p>The amendments extend the section's provisions to the onsite sewage system professional licenses and deletes references limited only to waterworks and wastewater works operators in favor of language that applies to all of the Board's licensees.</p>

I:\Lead, Asbestos, Waste Management\WWWOSSP\Reg Review\2007 NOIRA Implement 07 legislation\Proposed\TH02_Proposed Implement 2007 legislation OSSP.doc