



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	December 5, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

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 he applies for the installer license.

Acronyms and Definitions

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

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

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

§ 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* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>) states that, “The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § [32.1-163](#); and (iii) operators of alternative onsite sewage systems, as defined in § [32.1-163](#). Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems; (f) the division of sewage system installers into classes, one of which shall be restricted to the installation of conventional onsite sewage systems; and (g) other criteria the Board deems necessary.”

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 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 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 apply.

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 sewage system installation contractors in Virginia.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested 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. The proposed 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

1) The primary 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 onsite 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.

No disadvantages to the public or Commonwealth have been identified.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

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

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Trisha Henshaw, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email WaterWasteOper@dpor.virginia.gov, phone (804) 367-0362, or fax (866) 350-5354. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website

(<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

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

**Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Financial Status and Projections**

Current Regulations

<u>Biennium</u>	<u>Beginning Cash</u>		<u>Ending Cash</u>		<u>Callahan Act %</u>
	<u>Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Balance</u>	
2010-12	399,296	469,525	596,129	272,692	45.7%
2012-14	272,692	586,624	681,563	177,753	26.1%
2014-16	177,753	641,044	724,971	93,826	12.9%
2016-18	93,826	641,044	771,043	-36,173	-4.7%

Number of Regulators

6,687 as of 10/1/2012 There are 1,023 sewage system installers, including 958 interim installers.

Fee History \$

<u>Major Fee Type</u>	<u>2001</u>	<u>2005- Current</u>
Individual Application:	85	100
Individual Renewal:	45	80

**Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
Financial Status and Projections**

Proposed Regulations

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Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	<p>a) Fund Source: NGF (0900)</p> <p>(b) One-Time: No one-time costs are expected as a result of this regulatory change.</p> <p>Ongoing: No ongoing costs are expected as a result of this regulatory change.</p>
Projected cost of the new regulations or changes to existing regulations on localities.	No change is anticipated.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	The revised regulations apply to professionals working as onsite sewage system installers and contractors working with the SDS (Sewage Disposal System) specialty. The regulations have no substantive affect on the installers or contractors.
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.	There are approximately 1,023 licensed onsite sewage system installers, including 958 interim onsite sewage system installers, and about 1,482 licensed contractors with the SDS specialty.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	No change is anticipated.
Beneficial impact the regulation is designed to produce.	The proposed amendments will result in less restrictive licensure requirements while ensuring minimum competency for onsite sewage system professionals.

**Board for Waterworks and Wastewater Works Operators and On Site Sewage System Professionals
Fiscal Impact of Proposed Regulation**

Summary:

The current regulations are being revised with some changes and enhancements. This proposed regulation updates the definitions of direct supervisor and direct supervision, clarifies the experience requirements for sewage system installers and revises the documentation submission and verification requirements for sewage system installers. The initial regulations for the program for onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators were effective July 1, 2009. 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 2013	FY 2014	FY2015	FY2016
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	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

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.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: 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

Estimated Number of Regulants: There are approximately 1,023 licensed sewage system installers, including 958 interim installers, and about 1,482 licensed contractors with the Sewage Disposal System specialty.

Projected Cost to Regulants: There is no anticipated cost to the regulants.

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 amendments are the alternative. The amendments provide less stringent entry requirements to licensure for onsite sewage system installers. The less stringent entry requirements continue to ensure minimum competency and incorporate the least intrusive standards to the regulated community.

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.

Licensure of onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators is mandated by statute. The proposed amendments establish less stringent entry requirements to licensure for onsite sewage system installers, continue to ensure minimum competency, and incorporate the least intrusive standards to the regulated community and small businesses.

Public comment

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

The proposed amendments began as a fast-track process; however, because of the number of objections to the fast-track process, the fast-track process has been converted to the Standard rulemaking process, pursuant to [§2.2-4012.1](#) of the Code of Virginia.

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 list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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</u> of 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 he currently works for has the SDS specialty on the contractor license at the time 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 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.3.a		Requires that an applicant for an alternative installer license submit completion statements and operation permits from VDH as proof of experience for work done after 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 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.3.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.
18VAC160-20-97.3.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.3.d		Requires that an installer applicant have two years of experience installing sewage systems during the last four years <u>under the direct supervision</u> of 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 he currently works for has the SDS specialty on the contractor license at the time he applies for the installer license.
	18VAC160-20-97.C.3.e		18VAC160-20-97.C.3.c and 18VAC160-20-97.C.3.d both require that the applicant

			<p>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.</p>
<p>18VAC160-20-97.C.3</p>		<p>Requires that an individual be listed on the contractor completion statement in order for that statement to verify his experience of installing a particular sewage system</p>	<p>Contractor completion statements specify the contractor (firm) that completed the installation, not the individuals involved. The provision of the completion statement alone 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 performed the installation.</p>