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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC160-40
<b>VAC Chapter title(s)</b>	Onsite Sewage System Professionals Licensing Regulations
<b>Action title</b>	2022 General Review
<b>Date this document prepared</b>	May 16, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (“the Board”) intends to undertake a general regulatory review of the Onsite Sewage System Professionals Licensing Regulations. The regulation establishes (i) the entry requirements for licensure as an onsite sewage system installer, onsite sewage system operator, and onsite soil evaluator, including requirements specific to those who work with conventional and alternative types of onsite sewage systems; (ii) requirements for maintaining and renewing licenses; (iii) standards of conduct and practice; and (iv) requirements for approval of training courses.

This regulation was promulgated in 2017<sup>1</sup>. Following the establishment of this chapter, members of the public, individuals in the onsite sewage industry, and agency staff identified several areas where the

<sup>1</sup> Prior to 2017, 18VAC160-20 - Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations, provided for the licensure and regulation of waterworks and wastewater works operators, and onsite

regulation would benefit from revision or clarification. A thorough review of the regulation is necessary to address these areas, ensure the regulation complements current Virginia law, provides minimal burdens on regulants while still protecting the public, are clearly written and understandable, and reflect current procedures and policies of the Department of Professional and Occupational Regulation (“the Department”).

The goals of the planned regulatory action are to review the existing regulation and propose any amendments the Board determines to be necessary and appropriate.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“CPE” means continuing professional education.

“VDH” means Virginia Department of Health.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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This regulatory change is not the result of a mandate.

This regulatory change is prompted by (i) feedback received by the agency from members of the public, including individuals in the onsite sewage system industry, and (ii) agency staff review of the regulation. Sources of public feedback have included formal comments received during meetings of the Board or committees of the Board, comments received during previous periodic review of the regulation, informal comments made to agency staff during public outreach events, and informal comments received by agency staff from licensees and applicants for licensure.

Both the public and agency staff have identified areas where the regulation would benefit from revision or clarification to better ensure the regulation achieves its intended purpose to protect the public welfare by ensuring only those individuals who are properly qualified engage in the profession, while also reducing or mitigating regulatory burdens on applicants seeking to obtain a license and licensees who maintain a license.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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sewage system professionals. 18VAC160-20 was repealed and replaced with 18VAC160-30 – Waterworks and Wastewater Works Operators Licensing Regulations; and 18VAC160-40 – Onsite Sewage System Professionals Licensing Regulations.

The agency is the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. Chapter 23 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for onsite sewage system professionals. Section 54.1-2301 of the Code of Virginia states, in part:

C. The Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators.

D. 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.

### Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The General Assembly has charged the Board with the responsibility for regulating those who install or operate onsite sewage systems, and those who perform the duties of an onsite soil evaluator, by requiring that such individuals obtain a license in order to engage in these occupations. Residences and businesses located on properties that do not have access to public sewer systems must rely on onsite septic systems to properly and safely dispose of wastewater they produce.

According to a VDH estimate, there are at least 1,131,094<sup>2</sup> existing onsite septic systems in Virginia. Installation and operation of onsite septic systems by those who lack sufficient expertise poses a risk to the public health and welfare. Soil evaluators are responsible for testing soils to determine whether sites are appropriate for installation of a disposal system, designing such systems, and certifying that such systems comply with applicable state regulations and local ordinances. Soil evaluators who lack sufficient expertise to perform these duties may pose a risk to the public health and welfare. These risks include the potential for environmental damage and contamination of water supply. In addition, the improper installation or operation of an onsite septic system can pose a substantial risk of financial harm to property owners who will be responsible for assuming the costs to remediate damage and repair/replace defective systems.

As the regulation is developed, the Board will likely need to address issues surrounding (i) possible barriers to licensure, including those encountered by individuals who are properly licensed in other states; (ii) possible barriers to individuals whose work only includes pumping of septic systems; (iii) how applicants can adequately demonstrate requisite knowledge and experience in order to qualify for licensure; and (iv) the minimum standards for the conduct and practice for onsite sewage system professionals, including standards for supervision of journeyman licensees and the responsibilities of

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<sup>2</sup> VDH does not have a complete inventory of all septic systems in the Commonwealth. The VDH estimate is based in part on (i) information obtained from the [1990 U.S. Census](#) (707,409 septic systems); (ii) onsite sewage system permit information since 2003 (240,944 approved or completed permits); and (iii) a VDH estimate of 182,741 systems installed between 1990 and 2003, based on average permitting data.

licensees to the public. These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

## Substance

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

During its review of the regulation, the Board is expected to consider the following topics:

1. General (18VAC160-40)
  - Repeal provisions of the regulation that are out-of-date.
  - Change appearances of “shall” to “must”, “will”, “may”, etc., as appropriate.
  - Amend regulations to provide clarity and to align with current practices and processes.
2. Definitions (18VAC160-40-10)
  - Review definitions.
3. Entry Requirements (18VAC160-40-20 through 18VAC160-40-280)
  - Review requirements for disclosure of criminal convictions for initial licensure.
  - Review requirements for disclosure of disciplinary actions for initial licensure.
  - Review training and experience requirements for journeyman installer, operator, and soil evaluator licenses.
  - Review training and experience requirements for master installer, operator, and soil evaluator licenses.
  - Review experience verification requirements and whom may verify experience.
  - Review applicable requirements for individuals licensed in another state or jurisdiction.
4. Renewal and Reinstatement Requirements (18VAC160-40-290 through 18VAC160-40-380)
  - Review current requirements for CPE for installers, operators, and soil evaluators.
5. Training Courses (18VAC160-40-390 through 18VAC160-40-430)
  - Review current training course requirements.
6. Standards of Conduct and Practice (18VAC160-40-440 through 18VAC160-40-510)
  - Review standards of conduct and practice.
  - Review supervision requirements.
  - Review prohibited acts.
  - Review licensee responsibilities.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

Onsite sewage system installer, onsite sewage system operator, and onsite soil evaluator licenses are issued to individuals. Many firms that provide onsite sewage installation, operation, or soil evaluation would likely qualify as small businesses as defined in § 2.2-4007.1 of the Code of Virginia. In addition, many firms that are approved by the Board to provide training courses would likely qualify as small businesses as defined in § 2.2-4007.1 of the Code of Virginia.

Prior to undertaking this regulatory action, the Board has attempted to address some of the concerns brought to its attention through issuing interpretive guidance. However, these efforts are insufficient to

adequately address these concerns on a long-term basis, as interpretive guidance cannot be a substitute for amending a regulation. No other viable alternatives to a regulatory change have been identified. One of the objectives of the regulatory review will be to identify areas where the regulation can be changed to reduce or mitigate regulatory burdens on applicants and licensees.

**Periodic Review and  
Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

This NOIRA is not being used to announce a periodic review or a small business impact review.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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In accordance with the Board’s Public Participation Guidelines (18VAC160-11), notification of this regulatory action will be made to persons on the agency’s notification list.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Joseph C. Haughwout, Jr.  
Regulatory Administrator  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
[WaterWasteOper@dpor.virginia.gov](mailto:WaterWasteOper@dpor.virginia.gov)  
(866) 350-5354 (fax)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.