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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation(s)	12VAC5-615
Regulation title(s)	Authorized Onsite Soil Evaluator Regulations
Action title	Repeal the regulation
Date this document prepared	January 5, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The 2007 Virginia General Assembly enacted House Bill 3134, which transferred implementation, administration, and enforcement of licensing requirements for authorized onsite soil evaluators from the Virginia Department of Health (VDH) to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals at the Department of Professional and Occupational Regulation (DPOR). DPOR promulgated regulations for onsite soil evaluators on July 1, 2009 (18VAC160-20). House Bill 3134 abrogated the Board of Health's authority to license authorized onsite soil evaluators. While Title 32.1 of the *Code of Virginia* contains other references to the Board of Health's regulation of authorized onsite soil evaluators, VDH has successfully implemented those statutory provisions independent of

12VAC5-615. As such, 12 VAC 5-615 is no longer necessary and the Board of Health does not have authority to implement the regulation.

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.

All requirements in 12VAC 5-615 will be repealed. Definitions and terms are adequately addressed in the Code of Virginia and through DPOR's licensing programs and policies. Deleting the terms and definitions contained in 12VAC5-615 will not impact the Board of Health's program.

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.

The Board of Health does not have a statutory mandate to establish a program for authorized onsite soil evaluators because of the amendments to the Code of Virginia (HB 3134 of the 2007 General Assembly session). The Board still has legislative authority to accept and review evaluations and designs from licensed onsite soil evaluators pursuant to Va. Code §§ 32.1-163, 32.1-163.5, 32.1-163.6, and 32.1-164.

Purpose

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

The health, safety, and welfare of citizens will not be affected by repeal of the AOSE Regulations. The AOSE Regulations were promulgated July 1, 2002 pursuant to Va. Code §§ 32.1-163.4, 163.5, 164, and 164.1:01. During the 2007 General Assembly session, HB 3134 (2007 Acts of Assembly Ch. 892) amended and re-enacted Va. Code §§ 32.1-163, 32.1-164, 54.1-300, 54.1-2300, 54.1-2301, and 54.1-2302. The legislation rescinded certificate requirements administered by VDH. In its place, the legislation directed DPOR to promulgate regulations for persons seeking a license as an onsite soil evaluator. The legislation obviates the need for the Board of Health to administer a certificate program for AOsEs.

DPOR adopted regulations for onsite soil evaluators (18VAC160-20). The AOSE Regulations unnecessarily establish a certificate program for qualifying individuals as AOsEs, including conflict of interest requirements. Documentation requirements in the AOSE Regulations for reports and designs are now contained in VDH policies that implement other regulations (e.g., 12VAC 5-610, 12VAC5-613, 12VAC5-640, and 12VAC5-630). Processing time limits and definitions have been established in the Code and agency policies, which further render the AOSE Regulations unnecessary.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

All requirements in 12VAC5-615 will be repealed.

Issues

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

The primary advantage to the public and the Commonwealth will be to remove unnecessary regulations that are not being implemented by VDH. Repealing the regulation will prevent confusion. There is not a disadvantage to the public and Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There is no requirement that would be more restrictive than federal requirements. The federal government does not regulate the profession of onsite soil evaluators.

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 is 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 Virginia Department of Health 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 Dwayne Roadcap, Director, Division of Onsite Sewage, Water Supplies, Environmental Engineering, and Marina Programs, 109 Governor Street, 5th Floor, Richmond, Virginia 23219, Dwayne.roadcap@vdh.virginia.gov, or by facsimile to 804-864-7475. 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 not be held following the publication of this stage of this regulatory action.

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 requirement creates the anticipated economic impact.

<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>There is no cost to the state from the repeal of this regulation.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There is no cost to any locality from the repeal of this regulation.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Rescinding the regulation will likely help individuals, businesses, and other entities because they will not need to read or understand 12VAC5-615.</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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>No stakeholder will be affected by the repeal of this regulation.</p>
<p>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 including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p>	<p>No costs are projected from the repeal of this regulation.</p>

<p>b) 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.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Repeal of the regulation will reduce confusion because another state agency regulates onsite soil evaluators.</p>

Alternatives

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

One alternative is to leave the regulation in place without repeal. However, this option creates unnecessary confusion. Repealing this regulation will not change any aspect of the Board of Health's program. Since enactment of HB 3134 and the adoption of regulations on July 1, 2009 by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, the Board of Health no longer certifies authorized onsite soil evaluators. The Board of Health can fully implement its program, including application requirements and terms of practice, without the regulations.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

The alternative is to leave the regulations in place even though they do not have any effect and are not being enforced. The Board can effectively administer its responsibilities through other applicable provisions of the Code of Virginia.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity

of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

The regulation is being repealed because another state agency regulates onsite soil evaluators.

Public comment

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

Commenter	Comment	Agency response
<p>Jeff T. Walker</p>	<p>The commenter objected to the fast track rescission of the AOSE Regulations. He recommended VDH work with the DPOR Waste Water Board, and consult the Professional Soil Scientist's and Engineering Boards to capture standards essential to the practice of onsite sewage system evaluation and design.</p>	<p>This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process.</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p> <p>Site documentation procedures are</p>

		<p>addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12VAC 5- 610).</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
<p>Gary C. Renger, OSE</p>	<p>The commenter objected to rescinding the regulations prior to inclusion in VDH Regulations or DPOR Regulations.</p>	<p>In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p>
<p>Robert Melby</p>	<p>The commenter objected to repeal without first having minimum standards for OSE work products.</p>	<p>VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p> <p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the</p>

		<p>Sewage Handling and Disposal Regulations (12VAC 5- 610).</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
<p>David K. Hogan, AOSE CPSS</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p> <p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12VAC5- 610).</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
<p>Kirk R, Sweeney</p>	<p>The commenter opposed repealing the AOSE regulations.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615.</p>

<p>Nan Gray, AOSE, LPSS Soil Works, Inc.</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12VAC5- 610).</p>
<p>Mark Smith Soil Consultants Drilling</p>	<p>The commenter opposed repealing the AOSE regulations.</p>	<p>In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615.</p>
<p>Tim Parker AOSE</p>	<p>The commenter opposed fast track repeal of the regulations before standards of practice could be adopted.</p>	<p>This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process.</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
<p>Jeff Sledjeski,</p>	<p>The commenter opposed fast</p>	<p>This regulatory action was initially</p>

<p>OSE</p>	<p>track repeal of the regulations before standards of practice could be adopted.</p>	<p>submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process.</p> <p>In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
<p>Steve Eitner, AOSE</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
<p>Dan Manweiler</p>	<p>The commenter opposed fast track repeal of the regulations before standards of practice could be adopted.</p>	<p>This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the</p>

		<p>AOSE regulations must be rescinded through the standard three-stage promulgation process.</p> <p>In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
David Hall	The commenter opposed repealing the AOSE regulations.	<p>In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
Kevin Seaford	The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.	<p>In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR</p>

		boards on issues affecting the industry and stakeholders. GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.
Robert Savage, AOSE	The commenter opposed fast track repeal of the regulations without a mechanism in place to capture standards of practice.	This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process. GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.
Kym Willoughby Harper, AOSE, LRH Soil Consultants, Inc.	The commenter opposed fast track repeal of the regulations before standards of practice could be adopted.	This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process. In 2009, legislation transferred the AOSE program to the Department of Professional and Occupational Regulation (DPOR). The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders. GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.
William	The commenter objected to the	In 2009, legislation transferred the

<p>Sledjeski, PSS, AOSE</p>	<p>repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>AOSE program to the Department of Professional and Occupational Regulation (DPOR).</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>GMP #2015-01, approved January 1, 2015, addresses expectations and submission requirements for both public and private sector OSE's.</p>
<p>Carbaugh Environmental</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR. The commenter added repealing the regulations would violate trade laws by preventing public access to qualified parties.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p> <p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal</p>

		<p>Regulations (12VAC5- 610).</p> <p>GMP #2015-01, effective January 1, 2015, contains Onsite Sewage Application Expectations and Requirements.</p> <p>Private sector providers continue to voice concerns regarding direct service delivery and perceived, and real, conflicts of interest inherent in the current paradigm. However, it should be noted that over time, and without a specific statutory mandate to require private evaluations and designs, the use of private sector designers has gained broad acceptance in many parts of the Commonwealth. In fiscal year (FY) 2015 the percentage of private sector participation was at an all-time high, with more than 42% of all applications being accompanied by work form a private sector designer. However, areas of low private sector participation persist today, particularly in more rural areas and in Southwest Virginia.</p>
<p>Tony Bible, Southwest Environmental Consulting, Inc.</p>	<p>The commenter opposed repeal of the regulations before standards of practice could be adopted.</p>	<p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12VAC5- 610).</p> <p>GMP #2015-01, effective January 1, 2015, contains Onsite Sewage Application Expectations and Requirements.</p>
<p>Tom W. Ashton</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for</p>

		<p>licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p> <p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12VAC 5- 610).</p> <p>GMP #2015-01, effective January 1, 2015, contains Onsite Sewage Application Expectations and Requirements.</p>
<p>Janet Swords</p>	<p>The commenter objected to repeal without first having minimum standards for OSE work products.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired</p>

<p>Stephen White, AOSE, LPSS</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>from the stakeholder community.</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p> <p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12VAC5- 610).</p> <p>GMP #2015-01, effective January 1, 2015, contains Onsite Sewage Application Expectations and Requirements.</p>
<p>Robert E. Lee, P.E.</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for</p>

		<p>licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p>
<p>Peter K. Kessecker, Soil Services, Inc.</p>	<p>The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.</p>	<p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p>
<p>Alan Brewer</p>	<p>The commenter opposed fast track repeal of the regulations before standards of practice could be adopted.</p>	<p>This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process.</p> <p>GMP #2015-01, effective January 1, 2015, contains Onsite Sewage Application Expectations and Requirements.</p>
<p>S. Michael</p>	<p>The commenter opposed repeal</p>	<p>The Board of Health does not have</p>

<p>Lynn</p>	<p>of the regulations without a mechanism in place to capture standards of practice.</p>	<p>authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural and technical issues that are desired from the stakeholder community.</p>
<p>Virginia Association of Onsite Soil Evaluators</p>	<p>The commenter objected to the fast track repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR. The commenter also included a history of the AOSE program and asked for all terms and definitions used since the program’s inception in 1994 be maintained in future regulations. The commenter stated a definition of “backlog” and timeline constraints for processing applications would be lost and need to be included in future regulations.</p>	<p>This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process.</p> <p>The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.</p> <p>VDH does not have authority to implement ethical requirements for licensees. VDH already has authority through Va. Code § 32.1-164 to develop procedural and technical requirements to process applications for the construction or approval of onsite sewage systems and wells. The Board of Health plans to amend the Sewage Handling and Disposal Regulations, which can address additional procedural</p>

		<p>and technical issues that are desired from the stakeholder community.</p> <p>Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of practice or conduct for AOSEs. The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12VAC 5- 610).</p> <p>GMP #2015-01, effective January 1, 2015, contains Onsite Sewage Application Expectations and Requirements. The GMP also defines the term “backlog” as well as the methods used to calculate. VDH will also incorporate the term “backlog” in future onsite regulation review processes.</p> <p>The General Assembly in 1994, added the procedures for determining onsite construction permit application backlogs. Prior to 1994 VDH did not accept designs from the private sector. A surge in real estate development and the fact that all onsite designs were being provided by VDH staff created lengthy waits for construction permit approvals. VDH began accepting designs from private sector designers (AOSE’s) as a means to combat lengthy backlogs. Multiple attempts and proposals to remove VDH from providing any design services in the years since 1994 have failed to achieve favorable support. Applications for construction permits accompanied by private sector designs are subject to VDH review timetables. Timelines for the review process are strictly adhered to and if VDH does not take action during the specified times construction permits are</p>
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		deemed approved. In 1994 backlogs were unavoidable, today by employing a private sector designer construction permits can be reviewed and approved in 15 days.
Robert Charnley	The commenter opposed the fast track repeal of the AOSE regulations.	This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process.
Bob Marshall/ Cloverleaf Environmental Consulting, Inc.	The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.	This regulatory action was initially submitted as a Fast Track action. However, since VDH received comments from 10 or more persons during the public comment period, the AOSE regulations must be rescinded through the standard three-stage promulgation process.
James B. Slusser	The commenter objected to the repeal of the regulations because he feels some definitions will be lost and the repeal will limit private sector input in the onsite program.	GMP #2015-01 effective January 1, 2015 contains Onsite Sewage Application Expectations and Requirements. The GMP also defines the term “backlog” as well as the methods used to calculate. VDH will also incorporate the term “backlog” in future onsite regulation review processes. The General Assembly in 1994, added the procedures for determining onsite construction permit application backlogs. Prior to 1994 VDH did not accept designs from the private sector. A surge in real estate development and the fact that all onsite designs were being provided by VDH staff created lengthy waits for construction permit approvals. VDH began accepting designs from private sector designers (AOSE’s) as a means to combat lengthy backlogs. Multiple attempts and proposals to remove VDH from providing any design services in the years since 1994 have failed to achieve

		favorable support. By employing a private sector designer strict timeframes for the review process are followed which eliminate lengthy backlogs.
K.R. “Trapper” Davis	The commenter objected to the repeal of the regulations without standards of practice and procedural considerations being captured by either VDH or DPOR.	The Board of Health does not have authority to implement 12VAC5-615. VDH continues to collaborate with DPOR staff and associated DPOR boards on issues affecting the industry and stakeholders.

Family impact

Please assess the impact of this 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.

There is no impact of the proposed regulatory action on family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 5-615-10	N/A	Describes the authority for the regulations	The Board does not have authority to qualify individuals as Authorized Onsite Soil Evaluators (see HB 3134 from the 2007 General Assembly session). DPOR enacted regulations that administer a licensing program for onsite soil evaluators (18 VAC160-20).
12 VAC 5-615-20	N/A	Describes the purpose of the regulations.	The Board does not have authority to qualify individuals as AOSEs. The Board does not

			need procedures to become an AOSE or maintain a certificate. Site documentation procedures are addressed through other agency policy and regulations. There is no authority to establish standards of Practice or conduct for AOSEs.
12 VAC 5-615-30	N/A	Describes the relationship to the Sewage Handling and Disposal Regulations	The Board is repealing the regulation so its relationship to another regulation is moot.
12 VAC 5-615-40	N/A	Describes the administration of the regulation.	The Board is repealing the regulation so its administration is moot.
12 VAC 5-615-50	N/A	Describes the creation of an advisory committee.	The Board is repealing the regulation. The Sewage Handling and Disposal Regulations establish an advisory committee at 12 VAC 5-610- 50.
12 VAC 5-615-60	N/A	Describes the scope of the regulation.	The Board is repealing the regulation so its scope is moot. Content and form for site and soil evaluation reports are administered through the Sewage Handling and Disposal Regulations (12 VAC 5-610). Local ordinances are addressed in the Code of Virginia.
12 VAC 5-615-70	N/A	Describes roles and responsibilities for AOSE or professional engineers working in consultation with an AOSE.	The Board has already established procedures to process applications with supporting private sector work through its administration of the Sewage Handling and Disposal Regulations (12 VAC 5- 610). This regulation is not necessary.
12 VAC 5-615-80	N/A	Describes processing time limits and deemed approval.	Processing time limits and deemed approval are addressed in Title 32.1, Chapter 6 of the Code of Virginia. The regulation is not necessary.
12 VAC 5-615-90	N/A	Describes the practice of engineering.	The practice of engineering is defined in the Regulations for Alternative Onsite Sewage Systems. Va. Code § 54.1-400 provides additional guidance regarding the practice of engineer. This regulation is not necessary.
12 VAC 5-615-100	N/A	Requires a person to sign a certification statement for submissions to the Department of Health.	The Board does not have authority to qualify individuals as AOSEs. DPOR regulates the practice. The Board has other policies and regulations that implement this regulation. Va. Code § 32.1-163.5 of the Code of Virginia requires private sector evaluations and designs to be certified as complying with the Board's regulations. This regulation is not necessary.
12 VAC 5-615-110	N/A	Describes right of entry.	The agency already has this authority pursuant to Va. Code § 32.1-25. This regulation is not necessary.
12 VAC 5-615-120	N/A	Provides a list of definitions.	These terms are adequately addressed in the Code of Virginia and through DPOR's licensing programs and policies. Deleting these definitions will not impact the Board of Health's program. This regulation is not necessary.
12 VAC 5-615-130	N/A	Provides notice of the administrative process act.	Va. Code § 2.2-4000 applies to the agency. This regulation is not necessary.

12 VAC 5-615-140	N/A	Provides authority to develop an emergency order or rule.	12 VAC 5-615 is being repealed in its entirety so there is no need for this authority.
12 VAC 5-615-150	N/A	Provides details about the enforcement of the regulation.	The Board is repealing the regulation so details about the enforcement of the regulation are moot.
12 VAC 5-615-160	N/A	Provides notice that the regulations may be suspended during disasters.	The Board is repealing the regulation so this regulation is not necessary.
12 VAC 5-615-170	N/A	Provides ability to grant variances.	The Board is repealing the regulation so procedures to grant a variance are not necessary.
12 VAC 5-615-180	N/A	Provides requirements for agency case decisions.	The Board is repealing the regulation so notice for case decisions is not necessary.
12 VAC 5-615-190	N/A	Reserved for future use.	The Board is repealing the regulation so future use will not occur.
12 VAC 5-615-200	N/A	Provides requirements for an agency case decision.	The Board is repealing the regulation so case decisions pursuant to this regulation will not be made.
12 VAC 5-615-210	N/A	Describes renewal of AOSE certificates.	DPOR has regulatory oversight for onsite soil evaluators.
12 VAC 5-615-220	N/A	Reserved for future use.	The Board is repealing the regulation so future use will not occur.
12 VAC 5-615-230	N/A	Describes application requirements to obtain an AOSE certification.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-240	N/A	Describes processing procedures for AOSE applications.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-250	N/A	Describes fees to process applications for certification as an AOSE.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-260	N/A	Describes expiration of the AOSE certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-270	N/A	Describes renewal procedures for the AOSE certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-280	N/A	Describes site evaluation and design requirements for certificate holders.	The Board does not issue certificates. DPOR has regulatory oversight for licensing onsite soil evaluators. The Board of Health has regulations and policies that address applications with supporting private sector work. The Board is repealing this regulation because it is not necessary.
12 VAC 5-615-290	N/A	Describes authority to revoke or suspend an AOSE certification.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-300	N/A	Describes means to have a certificate re-instated.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-310	N/A	Describes appeal process for suspension or revocation of a certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators
12 VAC 5-615-320	N/A	Provides that a certificate holder cannot certify a site that has been previously denied.	The Board of Health has other regulations and policies that address applications with supporting private sector work.
12 VAC 5-615-330	N/A	Requires an AOSE to notify when there has been a change in status.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-340	N/A	Describes minimum requirements for documentation	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.

12 VAC 5-615-350	N/A	Describes minimum documentation requirements and time limits to process applications.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-360	N/A	Describes minimum information needed for a site evaluation report.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-370	N/A	Describes access to information	The Board of Health has other regulations and policies that address this topic. The Freedom of Information Act also adequately addresses this topic. This regulation is not necessary.
12 VAC 5-615-380	N/A	Describes minimum information needed for design and construction, including site denial.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-390	N/A	Describes professional courtesy reviews.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-400	N/A	Describes field checks.	The Board of Health has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
12 VAC 5-615-410	N/A	Describes a certificate holder's responsibility to the public.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-420	N/A	Describes obligations of the certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-430	N/A	Describes conflict of interest disclosure for a certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-440	N/A	Describes additional obligations of a certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-450	N/A	Describes a certificate holder's obligation to be truthful.	DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-460	N/A	Describes the certificate holder's other responsibilities.	The Board is repealing the regulation. DPOR has regulatory oversight for licensing onsite soil evaluators.
12 VAC 5-615-470	N/A	Describes the certificate holder's good standing in other jurisdictions.	The Board is repealing the regulation. DPOR has regulatory oversight for licensing onsite soil evaluators.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.