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Final 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 of AOSE Regulations
Date this document prepared	March 26, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. 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 House Bill 3134 rescinded the Board of Health (Board)'s authority to license authorized onsite soil evaluators. While Title 32.1 of the *Code of Virginia* contains other references to the Board's regulation of authorized onsite soil evaluators, VDH has successfully implemented those statutory provisions independent of 12VAC5-615. As such, 12VAC5-615 is no longer necessary and

the Board does not have authority to implement the regulation. A 2016 effort to repeal the regulation using the Fast Track process did not result in repeal because objections were filed during the public comment period.

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All requirements in 12VAC5-615 are to be repealed. Definitions and terms are addressed adequately in the Code of Virginia and through DPOR's licensing programs and policies.

Statement of Final Agency Action

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

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

House Bill 3134, 2007 Acts of the Assembly Ch. 892.

The 2007 Virginia General Assembly enacted House Bill 3134, which transferred implementation, administration, and enforcement of licensing requirements for authorized onsite soil evaluators from VDH to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals at DPOR. House Bill 3134, 2007 Acts of the Assembly Ch. 892, further rescinded the Board's authority to license authorized onsite soil evaluators. This action, along with DPOR's promulgation of regulations for onsite soil evaluators on July 1, 2009 (18VAC160-20), provides the impetus to repeal 12VAC5-615.

Legal Basis

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

The Board does not have statutory authority to establish and maintain certification for authorized onsite soil evaluators because of the amendments to the Code of Virginia (HB 3134 of the 2007 General Assembly session). The Board retains 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 regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The repeal of the AOSE Regulations is essential to protect the health, safety, and welfare of citizens of the Commonwealth because it eliminates regulations for which the Board does not have statutory authority; thereby clarifying the use of appropriate regulations implemented by DPOR. 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 certification 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 eliminates the need for the Board to administer a certification 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., 12VAC5-610, 12VAC5-613, 12VAC5-640, and 12VAC5-630). Processing time limits and definitions established in the Code and agency policies 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 regulatory change, 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, include a specific statement to that effect.

The primary advantage to the public and the Commonwealth will be to remove unnecessary regulations no longer 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 list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific 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.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

DPOR has adopted regulations for onsite soil evaluators (18VAC160-20), and repeal of this regulation will eliminate duplication and apparent conflict. No other state agency is particularly affected.

Localities Particularly Affected

No locality is particularly affected.

Other Entities Particularly Affected

No other entity is particularly affected.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

An announcement of the repeal of 12VAC5-615 was published in Volume 35, Issue 2, of the Virginia Register of Regulations (September 17, 2018). The deadline for public comment was November 16, 2018. No public comments were received.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

No changes have been made since the announcement of the repeal of the regulation was published in Volume 35, Issue 2, of the Virginia Register of Regulations.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
All Sections	NA	Authorized Onsite Soil Evaluator Regulations	The regulation is repealed. The rationale based on each section is provided below.
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). This regulation is not necessary.
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. This regulation is not necessary.
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-	N/A	Describes the creation of an advisory committee.	The Board is repealing the regulation. The Sewage Handling and Disposal Regulations

50*			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 (12VAC5-610). 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 (12VAC5-610). 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'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 VAC5-615 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-	N/A	Provides ability to grant variances.	The Board is repealing the regulation so procedures to grant a variance are not

170*			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. This regulation is not necessary.
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. This regulation is not necessary.
12 VAC 5-615-240*	N/A	Describes processing procedures for AOSE applications.	DPOR has regulatory oversight for licensing onsite soil evaluators. This regulation is not necessary.
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. This regulation is not necessary.
12 VAC 5-615-260*	N/A	Describes expiration of the AOSE certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators. This regulation is not necessary.
12 VAC 5-615-270*	N/A	Describes renewal procedures for the AOSE certificate.	DPOR has regulatory oversight for licensing onsite soil evaluators. This regulation is not necessary.
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 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. This regulation is not necessary.
12 VAC 5-615-300*	N/A	Describes means to have a certificate re-instated.	DPOR has regulatory oversight for licensing onsite soil evaluators. This regulation is not necessary.
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. This regulation is not necessary.
12 VAC 5-615-320*	N/A	Provides that a certificate holder cannot certify a site that has been previously denied.	The Board has other regulations and policies that address applications with supporting private sector work. This regulation is not necessary.
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. This regulation is not necessary.
12 VAC	N/A	Describes minimum requirements	The Board has other regulations and policies

5-615-340*		for documentation	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 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 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 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 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 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 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. This regulation is not necessary.
12 VAC 5-615-420*	N/A	Describes obligations of the certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators. This regulation is not necessary.
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. This regulation is not necessary.
12 VAC 5-615-440*	N/A	Describes additional obligations of a certificate holder.	DPOR has regulatory oversight for licensing onsite soil evaluators. This regulation is not necessary.
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. This regulation is not necessary.
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. This regulation is not necessary.
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. This regulation is not necessary.